
Delaware Register of Regulations

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IN THIS ISSUE:

Regulations:
Proposed
Final

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before February 18, 2014.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

| ISSUE DATE | CLOSING DATE | CLOSING TIME |
|------------|--------------|--------------|
| April 1 | March 17 | 4:30 p.m. |
| May 1 | April 15 | 4:30 p.m. |
| June 1 | May 15 | 4:30 p.m. |
| July 1 | June 16 | 4:30 p.m. |
| August 1 | July 15 | 4:30 p.m. |

DIVISION OF RESEARCH STAFF

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| 2264 Use of Dealer License Plates on Boat Trailers..... | 17 DE Reg. 197 (Prop.) |
| 2272 Authorization of Police Agencies to Issue Vehicle Inspection Notices..... | 17 DE Reg. 197 (Prop.) |
| 2274 Distribution of Literature Advertising Businesses..... | 17 DE Reg. 197 (Prop.) |
| 2275 Requirements for Licensing of Vehicle Dealers..... | 17 DE Reg. 197 (Prop.) |

Division of Planning and Policy

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| 2309 Standards and Regulations for Subdivision Streets and State Highway Access..... | 17 DE Reg. 198 (Prop.) |
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Division of Technology and Support Services

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| 2501 External Equal Opportunity Complaint Procedure..... | 17 DE Reg. 833 (Prop.) |
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Division of Transportation Solutions

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| 2405 Oversize/Overweight Hauling Permit Policy and Procedures..... | 17 DE Reg. 202 (Prop.) 17 DE Reg. 756 (Final) |
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EXECUTIVE DEPARTMENT

Delaware Economic Development Authority

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| 401 Procedures Regarding Non-State Guaranteed Bonds..... | 17 DE Reg. 90 (Final) |
| 403 Administration and Operation of Council on Development Finance | 17 DE Reg. 90 (Final) |

Office of Management and Budget

Division of Facilities Management

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| Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects..... | 17 DE Reg. 716 (Prop.) |
| Regulation Governing the State of Delaware Asbestos Certification and Training Program..... | 17 DE Reg. 63 (Prop.) 17 DE Reg. 446 (Final) |

Statewide Benefits Office

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| 2001 Group Health Care Insurance Eligibility and Coverage Rules..... | 17 DE Reg. 91 (Final) 17 DE Reg. 656 (Final) |
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STATE BOARD OF PENSION TRUSTEES

The Delaware Public Employees' Retirement System

| | |
|---|-----------------------|
| The Delaware Public Employees Pension System..... | 17 DE Reg. 91 (Final) |
|---|-----------------------|

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

**DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))
3 **DE Admin. Code** 1001

PUBLIC NOTICE**1001 Thoroughbred Racing Rules and Regulations****Summary**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to (i) amend Commission Regulation 9.2.2.3 relating to Jockey Agents; (ii) adopt by reference the ARCI Model Rules for Uniform Medication and Drug Testing as set forth in the January 15, 2014 draft submitted to the Commission; (iii) adopt by reference the RMTTC Thresholds for Environmental Contaminants and Androgenic-Anabolic Steroids Rule; and (iv) adopt by reference the Association of Racing Commissioners International (ARCI-011-020) Multiple Medications Violations Penalties. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of 29 **Del.C.** Ch. 101.

Comments

A copy of the proposed regulations is being published in the March 1, 2014 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these

proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before April 1, 2014. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after April 1, 2014, following review of the public comment, the Thoroughbred Racing Commission will determine whether to adopt the proposed amended Regulations or make additional changes because of the public comments received.

(i) Amendment to Jockey Agent Rule

9.2.2.3 Jockey Agents.

Each jockey agent shall obtain a license from the Commission.

9.2.2.3.1 Number of Jockeys an Agent May Be Permitted to Represent.

A jockey agent may represent up to:

Two journeymen jockeys; and

One apprentice jockey.

9.2.2.3.2 If a stable employs more than two contract jockeys, a jockey agent may represent all the jockeys under contract to that stable.

9.2.2.3.3 A jockey agent may not make or assist in the making of any engagement for any rider other than those he is licensed to represent.

(ii) Adoption of the ARCI Model Rules for Uniform Medication and Drug Testing

15.18 Association of Racing Commissioners International Model Rules for Uniform Medication and Drug Testing

15.18.1 The Commission hereby adopts by reference the Association of Racing Commissioners International (ARCI) Model Rules for Uniform Medication and Drug Testing as the same may be amended from time to time. If there is any inconsistency between the Commission's regulations and the ARCI Model Rules for Uniform Medication and Drug Testing, the provisions of the Commission's regulations shall prevail.

(iii) Adoption of the RMTC Thresholds for Environmental Contaminants and Androgenic-Anabolic Steroids Rule

15.1.3.1.3 A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Racing Medication and Testing Consortium (RMTC). The Commission hereby adopts by reference the RMTC Thresholds for Environmental Contaminants as the same may be amended from time to time. Androgenic-Anabolic Steroids are subject to the provisions of Rule 15.17.

15.17 Androgenic-Anabolic Steroids

15.17.1 The Commission hereby adopts by reference the Androgenic-Anabolic Steroids Rule, including the plasma thresholds, of the Racing Medication and Testing Consortium (RMTC) as the same may be amended from time to time.

(iv) Adoption of the ARCI Multiple Medications Violations Penalties

15.19 ARCI Multiple Medications Violations Penalties

15.19.1 The Commission hereby adopts by reference the Association of Racing Commissioners International (ARCI-011-020) Multiple Medications Violations Penalties as the same may be amended from time to time.

1001 Thoroughbred Racing Rules and Regulations

(Break in Continuity of Sections)

9.0 Agents, Authorized and Jockey

9.1 Agency Permitted:

PROPOSED REGULATIONS

9.1.1 Any registered Owner or Jockey or Apprentice Jockey holding a permit issued by the Commission may, as a principal, authorize another person as an agent to act in such principal's behalf in all matters pertaining to racing and transfer of horses at Licensee's premises. Such authorization shall be in writing and shall define the powers, limits and terms of such agency.

9.2 Registration or Permit Required:

9.2.1 No person may act as agent on behalf of another individual in a matter pertaining to racing at Licensee's premises or in the transfer of horses on its grounds unless both principal and agent have been duly issued a current registration or permit authorizing such activity.

9.2.2 If an Authorized Agent is to act on behalf of more than one principal, a separate registration or permit must be obtained as to each principal. Applications for such shall be accompanied by the written agency appointment, signed by the principal and notarized.

9.2.2.1 If such agency appointment is other than one authorizing broad general powers and qualifies or limits powers of the Agent to act on behalf of the principal in any material way, then such registration or permit, if issued, shall indicate thereon such limitation.

9.2.2.2 Any Racing Official may deny any Authorized Agent whose registration or permit is so limited any right to take action as such until he has inspected a copy of the agency appointment and ascertained to his satisfaction that any act in question is empowered by such agency.

~~9.2.2.3 No Jockey Agent shall make engagements for more than two riders except that a single Jockey Agent may represent all riders under contract employment to a single employer. No rider may be represented by two Jockey Agents at one time.~~

9.2.2.3 Jockey Agents. Each jockey agent shall obtain a license from the Commission.

9.2.2.3.1 Number of Jockeys an Agent May Be Permitted to Represent.

9.2.2.3.1.1 A jockey agent may represent up to: two journeymen jockeys, and one apprentice jockey.

9.2.2.3.2 If a stable employs more than two contract jockeys, a jockey agent may represent all the jockeys under contract to that stable.

9.2.2.3.3 A jockey agent may not make or assist in the making of any engagement for any rider other than those he is licensed to represent.

(Break in Continuity of Sections)

15.0 Medication; Testing Procedures

15.1 Prohibition and Control of Medication:

(Break in Continuity Within Section)

15.1.3 Foreign Substances:

15.1.3.1 No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.1.3.1.3:

15.1.3.1.1 A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the Trainer and agents responsible for the care or custody of the horse has/have been negligent in the handling or care of the horse.

15.1.3.1.2 A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.1 in any test sample of a horse participating in a race shall result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering which shall in no way be affected.

15.1.3.1.3 A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the ~~Veterinary Chemist Advisory Committee of the National Association of State~~

~~Racing Commissioners and approved by the Commission Racing Medication and Testing Consortium (RMTC). The Commission hereby adopts by reference the RMTC Thresholds for Environmental Contaminants as amended December 2013. Androgenic-Anabolic Steroids are subject to the provisions of Rule 15.17.~~

(Break in Continuity Within Section)

15.17 Androgenic-Anabolic Steroids

~~15.17.1 No Androgenic-Anabolic Steroids shall be permitted in test samples collected from racing horses except for residues of the major metabolite of stanozolol, nandrolone, and the naturally occurring substances, boldenone and testosterone, at concentrations less than the indicated thresholds: The Commission hereby adopts by reference the Androgenic-Anabolic Steroids Rule, including the plasma thresholds, of the Racing Medication and Testing Consortium (RMTC) as amended December 2013.~~

(Break in Continuity Within Section)

15.18 Association of Racing Commissioners International Model Rules for Uniform Medication and Drug Testing

~~15.18.1 The Commission hereby adopts by reference the Association of Racing Commissioners International (ARCI) Model Rules for Uniform Medication and Drug Testing as amended December 2013. If there is any inconsistency between the Commission's regulations and the ARCI Model Rules for Uniform Medication and Drug Testing, the provisions of the Commission's regulations shall prevail.~~

15.19 ARCI Multiple Medications Violations Penalties

~~15.19.1 The Commission hereby adopts by reference the Association of Racing Commissioners International (ARCI-011-020) Multiple Medications Violations Penalties as amended December 2013.~~

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

1001 Thoroughbred Racing Rules and Regulations

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PUBLIC NOTICE

Affordable Care Act Section 4106 Preventive Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding *the provision of preventive services described in section 4106 of the Affordable Care Act.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding the *provision of preventive services described in section 4106 of the Affordable Care Act*.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*
- Section 1905(a)(13) of the Social Security Act, *Other diagnostic, screening, preventive, and rehabilitative services*
- 45 CFR 440.130(c), *Preventive services*

Background

Section 4106 amends Section 1905(a)(13) of the Social Security Act to enable states to provide clinical preventive services and adult vaccines in accordance with the United States Preventive Services Task Force (USPSTF) recommendations and the Advisory Committee on Immunization Practices (ACIP) recommendations, respectively.

Section 4106(b) of the Affordable Care Act (ACA) establishes a one percentage point increase in the Federal Medical Assistance Percentage (FMAP) applied to expenditures for adult vaccines and clinical preventive services to states that cover, without cost-sharing, a full list of specified preventive services and adult vaccines. The increase would apply to such expenditures whether the services are provided on a fee-for-service (FFS) or managed care basis, or as an alternative benefit plan.

States seeking to claim the one percentage point FMAP increase must amend their state plans to reflect that they cover and reimburse all USPSTF grade A and B preventive services and approved vaccines recommended by ACIP, and their administration, without cost-sharing. The State must maintain documentation supporting expenditures claimed for these preventive services and must ensure that coverage and billings codes comply with any changes made to the USPSTF or ACIP recommendations.

States should provide an assurance in the state plan indicating that they have documentation available to support the claiming of federal match for such services. States should provide an additional assurance stating that they have a method to ensure that, as changes are made to USPSTF or ACIP recommendations, they will update their coverage and billing codes to comply with those revisions.

Summary of Proposal

DHSS/DMMA will seek approval from the Centers for Medicare and Medicaid Services (CMS) for a state plan amendment: 1) to recognize that Delaware Medicaid covers and reimburses all United States Preventive Services Task Force (USPSTF) grade A and B clinical preventive services and approved adult vaccines and their administration recommended by the Advisory Committee on Immunization Practices (ACIP), without cost-sharing; and, 2) to establish a one percentage point increase in federal medical assistance percentage (FMAP) for expenditures whether the services are provided on a fee-for-service (FFS) or managed care basis, or as an alternative benefit plan.

The preventive services specified in section 4106 of the Affordable Care Act are currently available under Attachment 3.1-A of Delaware's Medicaid state plan and covered under the physician, clinics, and other licensed practitioner service benefits and are reimbursed according to the methodologies provided in Attachment 4.19-B of the state plan for such services.

Assurances

The State will maintain documentation supporting expenditures claimed for these preventive services and will ensure that coverage and billing codes comply with any changes made to the USPSTF and ACIP recommendations.

The proposed plan amendment will be effective on April 1, 2014, and will apply to claims with dates of service on or after that date. The provisions of the preventive services state plan amendment are subject to approval by the CMS.

Fiscal Impact Statement

As section 4106 establishes a one percentage point increase in the Federal Medical Assistance Percentage applied to a specified preventive services and adult vaccines, the State expects to realize savings of one percent (1%) for these services State Fiscal Years 2014 and 2015.

DMMA PROPOSED REGULATION #14-08

REVISION:

Attachment 3.1-A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Delaware

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

13.c. Preventive Services

In accordance with section 4106 of the Affordable Care Act, Delaware Medicaid covers and reimburses all preventive services assigned a grade of A or B by the United States Preventive Services Task Force (USPSTF) and all approved vaccines and their administration, recommended by the Advisory Committee on Immunization Practices (ACIP), without cost-sharing.

Preventive Services are any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts acting within the scope of their practice under State law and are reimbursed according to the methodologies for services described in Attachment 4.19-B, *Methods and Standards for Establishing Payment Rates – Other Types of Care*, of the state plan.

The State assures the availability of documentation to support the claiming of federal reimbursement for these preventive services.

The State assures that the benefit package will be updated to reflect the changes that are made to USPSTF and ACIP recommendations, and that the State will update the coverage and billings codes to comply with these revisions.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PUBLIC NOTICE

Federal Medical Assistance Percentage Claiming Methodology for the Adult Group

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) has submitted an amendment to the Medicaid State Plan regarding the Federal Medical Assistance Percentage (FMAP) specifically, *the FMAP claiming methodology for the adult group*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The proposed provides notice to the public that Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) has submitted a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) relating to the availability of increased Federal Medical Assistance Percentage (FMAP) rates for certain adult populations under the Delaware Medicaid Program, specifically, *adult group FMAP claiming methodology*. The increased FMAP rates will be applicable beginning January 1, 2014.

Statutory Authority

- Patient Protection and Affordable Care Act, P.L. 111-148, enacted March 23, 2010 and the Health Care and Education Reconciliation Act of 2010, P.L. 111-152, enacted March 30, 2010 (collectively referred to as the Affordable Care Act)
- 42 CFR 433.206, *Threshold Methodology*

Background

On March 29, 2013, the Centers for Medicare and Medicaid Services (CMS) issued a final rule with request for comment to implement provisions of the Affordable Care Act on increased Federal Medical Assistance Percentage (FMAP), or matching, rates for certain Medicaid beneficiaries in states. This rule codifies the increased FMAP rates that will be applicable beginning January 1, 2014 and outlines a simplified methodology states will use to claim the appropriate matching rates.

Overview

An increased FMAP rate is available for medical services provided to people defined as “newly eligible” who are enrolled in the new eligibility group for adults up to 133 percent of poverty. In general, individuals are “newly eligible” if they are enrolled in the new adult group and would not have been eligible for full benefits, benchmark benefits, or benchmark-equivalent benefits under the eligibility rules in that state in effect in December 2009. The rule also describes the increased FMAP available under the Affordable Care Act in a defined “expansion state” if the state had expanded coverage to the adult group prior to enactment of the Affordable Care Act.

Based on public comments on the proposed rule and additional CMS analysis, the final rule selects the threshold methodology, one of the three methodologies described in the proposed rule, as the methodology that states will use to determine the appropriate FMAP related to “newly eligible” Medicaid beneficiaries in the new eligibility group for adults. Supported by states and other commenters, the threshold methodology is designed to provide for a simplified, individualized methodology for determining the appropriate FMAP that does not require states to maintain two sets of eligibility rules or to solicit information from applicants that is not necessary to determine eligibility.

Provisions of the Final Rule

The final rule implements the increased FMAP rates provided by the Affordable Care Act. It establishes a structure and process for their application, setting out applicable definitions and describing the threshold methodology that states will use to claim the new FMAP rates.

Increased FMAP rates through the Affordable Care Act (ACA)

The final rule establishes the following increased FMAP rates:

- *Newly Eligible FMAP* – The rule describes the increased FMAP available to states that expand to 133 percent of the federal poverty level under the Affordable Care Act for the expenditures of the “newly eligible” individuals enrolled in the new adult group created by the Affordable Care Act. The newly eligible FMAP is 100 percent in calendar years 2014-2016, 95 percent in calendar year 2017, 94 percent in calendar year 2018, 93 percent in calendar year 2019, and 90 percent in calendar years 2020 and beyond.

- *Expansion State FMAP* – The rule describes an increased FMAP for expenditures for nonpregnant, childless individuals in the new adult eligibility group in a defined “expansion state.” The expansion state FMAP is the regular FMAP rate increased by the number of percentage points equal to a “transition percentage” (that ranges from 50-100 percent) of the gap between the regular Medicaid FMAP and the increased “newly eligible” FMAP. In 2019 and beyond, the expansion state FMAP will be equal to the newly eligible FMAP, which means it will be 93 percent in 2019 and 90 percent in 2020 and thereafter.

Threshold Methodology

The final rule also describes the threshold methodology, which states will use to claim expenditures at the appropriate FMAP. The threshold methodology begins with a simplified method for determining the individuals who are and are not newly eligible, comparing their modified adjusted gross income (MAGI) based income (as calculated for purposes of eligibility determination) to converted modified MAGI-based income thresholds for relevant eligibility categories in effect in December 2009. It then describes, and in some cases, offers states options, regarding the treatment of other factors that may be relevant for purposes of claiming the appropriate FMAP. This final rule reaffirms CMS’ overall policy interest in promoting simplicity as states implement the Affordable Care Act.

The final threshold methodology rule:

- Clarifies that only an actual disability determination will establish whether an individual is disabled, allowing states to treat individuals who are enrolled in the new adult group as newly eligible for FMAP purposes during the period that a disability determination is pending. Once the determination is made, states will adjust claiming prospectively.
- Describes states’ options for how they will address other factors that may be relevant such as resource criteria, section 1115 demonstration enrollment caps, and spend-down requirements.
- Recognizes special circumstances may require additional adjustments, subject to CMS approval, to provide a basis for states to claim federal funding for expenditures of individuals enrolled in the adult group at the appropriate FMAP.
- Directs states to submit a threshold methodology state plan amendment for CMS approval prior to claiming the increased FMAP rates.

Summary of Proposal

Pursuant to the public notice requirements of section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205, DHSS/DMMA notifies the public that on January 17, 2014 a state plan amendment was submitted to CMS to modify the methodology and standards that it uses to reimburse for services delivered to eligible individuals under the Delaware Medicaid Program. Upon CMS approval, the proposed changes will update Attachment 2.6-A with new Supplement 18, *Methodology for Identification of Applicable Federal Medical Assistance Percentage (FMAP) Rates*. This plan page describes how the State will claim the appropriate FMAP for expenditures for the new adult group. The proposed effective date for this SPA is January 1, 2014.

NOTE: Consistent with federal law and the Medicaid State Plan, DMMA provided notice to the public regarding the proposed FMAP rates state plan amendment in the December 19, 2013 issue of the News Journal and the Delaware State News, respectively.

The provisions of the state plan amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

Increased FMAP rates through the Affordable Care Act (ACA):

- *Newly Eligible FMAP* - The newly eligible FMAP is 100 percent in calendar years 2014-2016, 95 percent in calendar year 2017, 94 percent in calendar year 2018, 93 percent in calendar year 2019, and 90 percent in calendar years 2020 and beyond.
- *Expansion State FMAP* - The expansion state FMAP is the regular FMAP rate increased by the number of percentage points equal to a “transition percentage” (that ranges from 50-100 percent) of the gap between the regular Medicaid FMAP and the increased “newly eligible” FMAP. In 2019 and beyond, the expansion state FMAP will be equal to the newly eligible FMAP, which means it will be 93 percent in 2019 and 90 percent in 2020 and thereafter.

PROPOSED REGULATIONS

Based upon preliminary estimates, it is anticipated that the federal fiscal impact will be as follows:

| | Federal Fiscal Year 2014 | Federal Fiscal Year 2015 |
|---------------|--------------------------|--------------------------|
| Federal Funds | \$ 78,254,636 | \$ 137,495,659 |

State Plan Under Title XIX of the Social Security Act

State: Delaware

METHODOLOGY FOR IDENTIFICATION OF APPLICABLE FMAP RATES

TN: DE SPA #14-001

Approval Date: _____

Effective Date: January 1, 2014

The State will determine the appropriate FMAP rate for expenditures for individuals enrolled in the adult group described in 42 CFR 435.119 and receiving benefits in accordance with 42 CFR Part 440 Subpart C. The adult group FMAP methodology consists of two parts: an individual-based determination related to enrolled individuals, and as applicable, appropriate population-based adjustments.

Part 1 – Adult Group Individual Income-Based Determinations

For individuals eligible in the adult group, the state will make an individual income-based determination for purposes of the adult group FMAP methodology by comparing individual income to the relevant converted income eligibility standards in effect on December 1, 2009, and included in the MAGI Conversion Plan (Part 2) approved by CMS on July 31, 2013. In general, and subject to any adjustments described in this SPA, under the adult group FMAP methodology, the expenditures of individuals with incomes below the relevant converted income standards for the applicable subgroup are considered as those for which the newly eligible FMAP is not available. The relevant MAGI-converted standards for each population group in the new adult group are described in Table 1.

Table 1: Adult Group Eligibility Standards and FMAP Methodology Features

| Covered Populations Within New Adult Group | | Applicable Population Adjustment | | | |
|--|---|---|----------------|-----------------------|-------------------|
| Population Group | Relevant Population Group Income Standard | Resource Proxy | Enrollment Cap | Special Circumstances | Other Adjustments |
| | For each population group, indicate the lower of: <ul style="list-style-type: none"> The reference in the MAGI Conversion Plan (Part 2) to the relevant income standard and the appropriate cross-reference, or 133% FPL. If a population group was not covered as of 12/1/09, enter "Not covered". | Enter "Y" (Yes), "N" (No), or "NA" in the appropriate column to indicate if the population adjustment will apply to each population group. Provide additional information in corresponding attachments. | | | |
| A | B | C | D | E | F |
| Parents/Caretaker Relatives | 107% FPL | NA | NA | NA | NA |
| Disabled Persons, non-institutionalized | Not Covered | NA | NA | NA | NA |
| Disabled Persons, institutionalized | 250% SSI FBR | NA | NA | NA | NA |
| Children Age 19 or 20 | Not Covered | NA | NA | NA | NA |
| Childless Adults | 108% FPL | NA | NA | NA | NA |
| | | | | | |

Part 2 – Population-based Adjustments to the Newly Eligible Population Based on Resource Test, Enrollment Cap or Special Circumstances

A. Optional Resource Criteria Proxy Adjustment (42 CFR 433.206(d))

1. The state:

Applies a resource proxy adjustment to a population group(s) that was subject to a resource test that was applicable on December 1, 2009.

Does NOT apply a resource proxy adjustment (Skip items 2 through 3 and go to Section B).

Table 1 indicates the group or groups for which the state applies a resource proxy adjustment to the expenditures applicable for individuals eligible and enrolled under 42 CFR 435.119. A resource proxy adjustment is only permitted for a population group(s) that was subject to a resource test that was applicable on December 1, 2009.

The effective date(s) for application of the resource proxy adjustment is specified and described in Attachment B.

2. Data source used for resource proxy adjustments:

The state:

Applies existing state data from periods before January 1, 2014.

Applies data obtained through a post-eligibility statistically valid sample of individuals.

Data used in resource proxy adjustments is described in Attachment B.

3. Resource Proxy Methodology: Attachment B describes the sampling approach or other methodology used for calculating the adjustment.

B. Enrollment Cap Adjustment (42 CFR 433.206(e))

1. An enrollment cap adjustment is applied by the state (complete items 2 through 4).

An enrollment cap adjustment is not applied by the state (skip items 2 through 4 and go to Section C).

2. Attachment C describes any enrollment caps authorized in section 1115 demonstrations as of December 1, 2009 that are applicable to populations that the state covers in the eligibility group described at 42 CFR 435.119 and received full benefits, benchmark benefits, or benchmark equivalent benefits as determined by CMS. The enrollment cap or caps are as specified in the applicable section 1115 demonstration special terms and conditions as confirmed by CMS, or in alternative authorized cap or caps as confirmed by CMS. Attach CMS correspondence confirming the applicable enrollment cap(s).

3. The state applies a combined enrollment cap adjustment for purposes of claiming FMAP in the adult group:

Yes. The combined enrollment cap adjustment is described in Attachment C

No.

4. Enrollment Cap Methodology: Attachment C describes the methodology for calculating the enrollment cap adjustment, including the use of combined enrollment caps, if applicable.

C. Special Circumstances (42 CFR 433.206(g)) and Other Adjustments to the Adult Group FMAP Methodology

1. The state:

Applies a special circumstances adjustment(s).

Does not apply a special circumstances adjustment.

2. The state:

Applies additional adjustment(s) to the adult group FMAP methodology (complete item 3).

Does not apply any additional adjustment(s) to the adult group FMAP methodology (skip item 3 and go to Part 3).

PROPOSED REGULATIONS

3. Attachment D describes the special circumstances and other proxy adjustment(s) that are applied, including the population groups to which the adjustments apply and the methodology for calculating the adjustments.

Part 3 – One-Time Transitions of Previously Covered Populations into the New Adult Group

A. Transitioning Previous Section 1115 and State Plan Populations to the New Adult Group

- Individuals previously eligible for Medicaid coverage through a section 1115 demonstration program or a mandatory or optional state plan eligibility category will be transitioned to the new adult group described in 42 CFR 435.119 in accordance with a CMS-approved transition plan and/or a section 1902(e)(14)(A) waiver. For purposes of claiming federal funding at the appropriate FMAP for the populations transitioned to new adult group, the adult group FMAP methodology is applied pursuant to and as described in Attachment E, and where applicable, is subject to any special circumstances or other adjustments described in Attachment D.
- The state does not have any relevant populations requiring such transitions.

Part 4 - Applicability of Special FMAP Rates

A. Expansion State Designation

The state:

- Does NOT meet the definition of expansion state in 42 CFR 433.204(b). (Skip section B and go to Part 5)
- Meets the definition of expansion state as defined in 42 CFR 433.204(b), determined in accordance with the CMS letter confirming expansion state status, dated October 23, 2013.

B. Qualification for Temporary 2.2 Percentage Point Increase in FMAP.

The state:

- Does NOT qualify for temporary 2.2 percentage point increase in FMAP under 42 CFR 433.10(c)(7).
- Qualifies for temporary 2.2 percentage point increase in FMAP under 42 CFR 433.10(c)(7), determined in accordance with the CMS letter confirming eligibility for the temporary FMAP increase, dated _____. The state will not claim any federal funding for individuals determined eligible under 42 CFR 435.119 at the FMAP rate described in 42 CFR 433.10(c)(6).

Part 5 - State Attestations

The State attests to the following:

- A. The application of the adult group FMAP methodology will not affect the timing or approval of any individual's eligibility for Medicaid.
- B. The application of the adult group FMAP methodology will not be biased in such a manner as to inappropriately establish the numbers of, or medical assistance expenditures for, individuals determined to be newly or not newly eligible.

ATTACHMENTS

Not all of the attachments indicated below will apply to all states; some attachments may describe methodologies for multiple population groups within the new adult group. Indicate those of the following attachments which are included with this SPA:

-
- | | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Attachment A – Conversion Plan Standards Referenced in Table 1 |
| <input type="checkbox"/> | Attachment B – Resource Criteria Proxy Methodology |
| <input type="checkbox"/> | Attachment C – Enrollment Cap Methodology |
| <input type="checkbox"/> | Attachment D – Special Circumstances Adjustment and Other Adjustments to the Adult Group FMAP Methodology |
| <input checked="" type="checkbox"/> | Attachment E – Transition Methodologies |

PRA Disclosure Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-1148. The time required to complete this information collection is estimated to average 4 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PUBLIC NOTICE

Medicaid Reimbursement for Prescription Drugs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the drug pricing reimbursement methodology for pharmaceutical products, specifically, implementation of the pricing benchmark, *National Average Drug Acquisition Cost (NADAC)*, as published by the Centers for Medicare and Medicaid Services (CMS).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The Division of Medicaid and Medical Assistance (DMMA) hereby affords the public notice of its intention to amend the Title XIX Medicaid State Plan regarding the drug pricing reimbursement methodology for pharmaceutical products, specifically, implementation of the pricing benchmark, *National Average Drug Acquisition Cost (NADAC)*.

Statutory Authority

- 1902(a)(19) of the Social Security Act, *Care and services under a Medicaid state plan be provided in a manner consistent with simplicity of administration and the best interests of beneficiaries*
- 1927 of the Social Security Act, *Payment for Covered Outpatient Drugs*
- 42 CFR §440.120, Prescribed drugs
- 42 CFR §447.201, *State plan requirements*

- 42 CFR §447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

Background

Section 1927(f) of the Social Security Act provides, in part, that the Centers for Medicare and Medicaid Services (CMS) may contract with a vendor to conduct monthly surveys with respect to prices for covered outpatient drugs dispensed by retail community pharmacies. In addition, section 1927(i) also provides in part that CMS complete an annual report to Congress that includes ingredient costs paid for single source, multiple source, and non-prescription covered outpatient drugs.

Monthly surveys focus on the drug prices that retail community pharmacies pay to acquire drugs. Specifically, the vendor surveys these acquisition costs of covered outpatient drugs purchased by independent and chain retail community pharmacies.

State Medicaid agencies reimburse participating pharmacy providers for covered outpatient drugs that are prescribed and dispensed to Medicaid beneficiaries. The payment consists of two parts: 1) reimbursement for drug ingredient costs, and 2) reimbursement for the cost of dispensing. In general, federal regulations require that Medicaid programs reimburse for drug ingredient costs at no more than the agency's best estimate of the acquisition cost for a drug. As defined in federal regulations at §42 CFR 447.502, estimated acquisition cost (EAC) is the state's best estimate of the prices generally and currently paid by providers for a drug marketed or sold by manufacturers or labelers in the package size of the drug most frequently purchased by providers.

Many Medicaid agencies currently utilize published drug pricing benchmarks to determine the EAC for drug ingredient costs. The Average Wholesale Price (AWP) was a primary drug pricing benchmark utilized in pharmaceutical reimbursement by state Medicaid agencies. Through numerous investigations, the Office of Inspector General found that AWP-based reimbursement was "fundamentally flawed" and caused Medicaid to pay too much for certain drugs.

In late 2009, a working group within the National Association of State Medicaid Directors (NASMD) convened to discuss various alternatives to AWP. The working group authored a white paper in June 2010 entitled "Post AWP Pricing and Reimbursement" that evaluated and developed options for the replacement of AWP in Medicaid reimbursement methodologies. Among the recommendations presented in the white paper was the establishment of a single national pricing benchmark based on average drug acquisition costs. Such a benchmark would provide state Medicaid agencies with a better estimate of prices paid by pharmacies for drugs because it would be based upon actual drug purchases. This approach to drug ingredient price determination provides greater accuracy and transparency in how drug prices are established and is generally more resistant to manipulation. The NASMD requested that CMS coordinate, develop, and support this benchmark.

CMS contracted with Myers and Stauffer LC, a national certified public accounting firm, to conduct surveys of retail community pharmacy prices, including drug ingredient costs, and to develop the National Average Drug Acquisition Cost (NADAC) pricing benchmark.

Purpose of NADAC

The purpose of the NADAC is to create a new national price benchmark that is more reflective of the prices that pharmacies pay to acquire prescription and over-the-counter drugs. The statute provides that such prices represent a nationwide average of consumer purchase prices, net of discounts and rebates. The survey data will provide information which CMS expects to use to assure compliance with Federal requirements. A monthly nationwide survey of licensed retail community pharmacies, which will include independent pharmacies and chain pharmacies in the United States, will be performed to collect drug acquisition cost information. To ensure that NADACs are accurate, timely, and robust, the NADACs will be reviewed and updated on a weekly basis.

The NADAC is available for consideration by the States to assist with their individual pharmacy reimbursement policies. CMS has contracted with Myers and Stauffer LC, a national certified public accounting firm, to conduct the surveys of drug ingredient costs from pharmacy entities, such as independent pharmacies and chain pharmacies in the United States, and to develop and maintain the NADAC pricing benchmark.

States have the option to use the NADAC as a reference price when setting their reimbursement methodology. To do so, states must submit a State Plan Amendment (SPA) to CMS in accordance with state plan requirements if they decide to use NADAC as a basis for payment.

Summary of Proposal

Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is implementing a new drug pricing methodology to reimburse pharmacies that dispense pharmaceutical products to Medicaid recipients. Effective April 1, 2014, DHSS/DMMA will start reimbursing pharmacies using the average acquisition cost (ACC) of a given pharmaceutical product using National Average Drug Acquisition Cost (NADAC) files that gives state Medicaid agencies covered outpatient drug information regarding retail prices for prescription drugs. The NADAC, as published by CMS, is a more accurate reflection of the ingredient cost of the medications covered by the DMMA drug benefit program.

Instead of the Average Wholesale Price (AWP), DMMA will reimburse pharmacy providers based on the NADAC for the ingredient cost and a dispensing fee more in line with the true cost of dispensing. The change will also reflect a more accurate definition of "Usual & Customary" for these providers.

Professional Dispensing Fee

Currently, the dispensing fee is set at three dollars and sixty-five cents (\$3.65). DMMA will also revise its dispensing fee from \$3.65 to ten dollars (\$10.00) for each prescription.

In a proposed rule published in the Federal Register on February 2, 2012 regarding covered outpatient drugs at <http://www.gpo.gov/fdsys/pkg/FR-2012-02-02/pdf/2012-2014.pdf>, CMS proposes to replace the term "dispensing fee" with "professional dispensing fee". In the proposed rule, CMS retains the current definition of "dispensing fee," but proposes to replace the term with "professional dispensing fee" to reinforce the agency's position that once the reimbursement for a drug is properly determined, the dispensing fee should reflect the pharmacist's professional services and costs. DMMA agrees and has replaced the term "dispensing fee" with "professional dispensing fee".

The provisions of this state plan amendment are subject to approval by CMS.

Fiscal Impact Statement

It is estimated that the fiscal impact will result in savings in state and federal expenditures as follows:

| | Federal Fiscal Year 2014 | Federal Fiscal Year 2015 |
|-----------------------|--------------------------|--------------------------|
| General (State) Funds | \$604,000.00 | \$1,340,000.00 |
| Federal Funds | \$747,000.00 | \$1,660,000.00 |

**DMMA PROPOSED REGULATION #14-06
REVISIONS:**

ATTACHMENT 4.19-B
Page 14

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: Delaware

**METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE
REIMBURSEMENT FOR PHARMACEUTICALS****Overview**

The Delaware Medical Assistance Program (DMAP) will reimburse pharmaceuticals using the lower of:

- The usual and customary (U & C) charge to the general public for the product,
- ~~The Estimated Acquisition Cost (EAC) which is defined for both brand name and generic drugs as follows:~~
 - ~~For Traditional Pharmacies: AWP minus 16% plus dispensing fee per prescription, effective for dates of service on or after April 1, 2009~~
 - ~~For Non-Traditional Pharmacies: AWP minus 16% plus dispensing fee per prescription, effective for dates of service on or after April 1, 2009~~

PROPOSED REGULATIONS

- The National Average Drug Acquisition Cost (NADAC) or if a NADAC is not available the Average Wholesale Price (AWP) minus 19%.
- A State-specific maximum allowable cost (DMAC) and, in some cases, the Federally defined Federal Upper Limit (FUL) prices plus a dispensing fee, when the purchase price is not appropriately represented by either the NADAC nor 81% of the AWP.
- The Federal Upper Limit (FUL) will not be used since it would be in conflict with the NADAC which is updated more frequently.

Entities that qualify for special purchasing under Section 602 of the Veterans Health Care Act of 1992, Public Health Service covered entities, selected disproportionate share hospitals and entities exempt from the Robinson-Patman Price Discrimination Act of 1936 must charge the DMAP no more than an estimated acquisition cost (EAC) their actual acquisition cost (AAC) plus a professional dispensing fee. The EAC AAC must be supported by invoice and payment documentation.

Professional Dispensing Fee:

The professional dispensing fee rate is ~~\$3.65~~ \$10.00. There is one professional dispensing fee per 30-day period unless the class of drugs is routinely prescribed for a limited number of days.

Definitions:

Delaware Maximum Allowable Cost (DMAC) - a maximum price set for reimbursement:

- ~~for generics available from three (3) or more approved sources, or~~
- when a single source product has Average Selling Prices provided by the manufacturer that indicates the AWP is exaggerated, or
- when the NADAC does not reflect the most current cost of a multiple source drug, or
- if a single provider agrees to a special price.

Usual and Customary (U & C) - the lower of

- amount charged to a cash paying customer
- amount charged to customers enrolled in the provider's discount program
- contracted rates with Delaware State employee groups
- contracted rates for any Federal employee groups.

Any willing provider can dispense the product.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)u.1 (16 Del.C. §122(3)u.1)

PUBLIC NOTICE

4458 State of Delaware Food Code Regulations

The Department of Health and Social Services, Division of Public Health, is proposing regulations which amend Title 16 of the Delaware Code relating to the State of Delaware Food Code. Due to the extensive number of amendments the Division has concluded that the current 4458 State of Delaware Food Code regulations should be repealed and replaced in their entirety with the proposed regulations being published.

The proposed Code, based on the U.S. Food and Drug Administration's (FDA) 2013 Food Code, will introduce several important changes to better serve and protect Delawareans. Changes include:

- A requirement that the Person in charge (PIC) must be certified through an accredited food protection manager certification program.
- "Potentially hazardous food (PHF)" which will be replaced with the new terminology, "time and temperature controlled for safety (TCS)."
- Food establishments will be required to post notification to the public that "a copy of the most recent inspection report is available upon request."

On March 1, 2014, the Division plans to publish the amended 4458 State of Delaware Food Code regulations and hold them out for public comment per Delaware law. Copies of the proposed regulations are available for review in the March 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4546.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Monday, March 31, 2014 at:

Deborah Harvey, Division of Public Health

417 Federal Street

Dover, DE 19901

Email: Deborah.Harvey@state.de.us; phone: (302) 744-4700

Please Note: Due to the size of the proposed regulation it is not being published here. The following url's are provided for those that wish to obtain the proposed Food Code.

Table of Contents

Chapter 1 Purpose and Definitions

Chapter 2 Management and Personnel

Chapter 3 Food

Chapter 4 Equipment, Utensils and Linens

Chapter 5 Water, Plumbing and Waste

Chapter 6 Physical Facilities

Chapter 7 Poisonous or Toxic Material

Chapter 8 Compliance and Enforcement

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DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PUBLIC NOTICE

Delaware Temporary Assistance for Needy Families - Employment and Training Program Requirements

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding Delaware Temporary Assistance for Needy Families (TANF) Employment and Training Program requirements, specifically, *Sanctions and Curing Sanctions*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 31, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Delaware TANF Employment and Training Program, specifically, *Sanctions and Curing Sanctions*.

Statutory Authority

- 45 CFR 261.13, *May an individual be penalized for not following an individual responsibility plan?*
- 45 CFR 261.14, *What is the penalty if an individual refuses to engage in work?*
- 45 CFR 261.15, *Can a family be penalized if a parent refuses to work because he or she cannot find child care?*
- 45 CFR 261.56, *What happens if a parent cannot obtain needed child care?*

Background

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193) provides funding to states through the Temporary Assistance for Needy Families (TANF) block grant. The TANF block grant is used to provide cash assistance, services and work programs for needy families, utilizing federal TANF funds along with state funds to develop and deliver services to needy families.

The 1996 PRWORA law also established the requirements that states must meet, including rules related to work requirements. Under the work provisions of the law, states must require recipients, with some exceptions, to engage in work, impose sanctions (by reducing or terminating benefits) if an individual refuses to participate in required work activities, and achieve a work participation rate measured in accordance with detailed provisions of the law. A state that fails to meet the work rate can be subject to fiscal penalty.

Summary of Proposal

The proposed changes reformat and clarify text for ease of readability. Also, a subsection was added and all section titles were renamed to more accurately reflect the section contents.

The following policy sections in the Division of Social Services Manual (DSSM) are affected by the proposed changes:

DSSM 3100, ~~*Employment and Training and Work*~~ *Requiring Employment and Training Participation*

DSSM 3011.2, ~~*Sanctions for Failing to Comply with Requirements*~~ *Sanctioning for Not Meeting Employment and Training Requirements*

NEW DSSM 3011.2.1, Sanctioning When Child Care Is Not Available

DSSM 3011.3, ~~*Curing Sanction Penalties*~~ *Curing a Full Family Sanction*

Summary of Rule Changes

Delaware TANF families that receive a sanction as a result of not meeting their required employment and training hours are sanctioned. The current sanction rule requires that the TANF case be closed. The family must complete four (4) consecutive weeks of participation for the case to reopen; additionally the case must be closed at least one (1) month.

When examining TANF work participation rates it was discovered that many families begin to immediately re-participate and that the mandatory one month closure was a significant hardship since they were incurring expenses as the result of participating. Additionally, these families while participating were not reflected in the TANF work participation rate because they were not receiving a grant.

The policy change would remove the requirement that the case be closed for at least one (1) month and reopen the TANF case at the beginning of the four (4) week participation period.

This change allows families to immediately reengage and potentially not see a reduction in their TANF grant, while also raising the TANF work participation rate by an estimated three (3) percent.

Approximately, thirty-two (32) more families a month will receive TANF benefits because of the rule change.

DSS PROPOSED REGULATION #14-04

REVISIONS:

3011 ~~Employment and Training and Work~~ Requiring Employment and Training Participation

DSS expects work-eligible adults to participate in either employment or activities related to finding work (e.g. employment and training activities) for the required number of hours ~~30, 35, or 55~~ twenty (20), thirty (30), or forty (40) hours a week for two (2) consecutive weeks prior to TANF benefits being authorized. The TANF benefit will continue uninterrupted as long as the participation in work or work activities continues for the required number of hours per week (see sections ~~3006.2 3006, 3006.1, 3006.1, and 3006.2~~). ~~DSS also expects caretakers to cooperate as necessary with school and other officials to ensure satisfactory school attendance by dependent children under age 16. The failure of clients to maintain any of these activities represent sanctionable offenses.~~

3011.2 ~~Sanctions for Failing to Comply With Requirements~~ Sanctioning For Not Meeting Employment and Training Requirements

~~See Administrative Notice: A-7-99 Child Care Issues-~~

~~Self-sufficiency requirements include those related to employment and training and work.~~

~~The penalty for noncompliance with the self-sufficiency requirements will be the closure of the entire TANF case for one month and a mandatory four consecutive weeks of participation. The four consecutive week participation is mandatory to cure the sanction and reopen the case. The case may remain closed longer than one month if the four consecutive weeks of participation have not been completed.~~

~~If the adult is deemed unemployable remove the sanction and enter the correct exemption. Then the case may be reopened for the length of time that the adult is not able to work.~~

~~The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be the closure of the TANF case for one month or until the individual obtains a job of equal or higher pay. If the individual participates for the required amount of hours in approved work related activities for four consecutive weeks the case can be reopened.~~

| CMR Requirements | Sanctions |
|---|---|
| Employment and Training/ work and Workfare | TANF case closure for one full month plus four consecutive weeks of full participation prior to opening the case. |
| Child under 16 not attending school | A \$50.00 successive sanction for the teen not attending school when the parent does not work with the school to ensure school attendance. |
| Child 16 and over not attending school | The removal of the teen from the grant and the reduction in household size. |
| CMR requirements | An initial \$50.00 reduction in the TANF grant. If the participant has not complied, an additional \$50.00 reduction each month until compliance occurs. |

~~Note: Under TANF regulations, Section 402(e)(2), DSS cannot impose sanctions when individuals refuse to participate in work or work-related activities if these individuals are single custodial parents with at least one child under age six, and these parents have demonstrated an inability to obtain needed child care. This provision neither makes parents exempt from participation in work activities, nor makes them exempt from time limits. It only restricts DSS authority to sanction.~~

~~Parents must demonstrate the following:~~

~~the unavailability of appropriate child care within a reasonable distance from their home or work (reasonable distance is defined as care that is located in proximity to either a parent's place of employment or near the parent's home, generally care that is within one hour's drive);~~

~~the unavailability or unsuitability of informal child care by a relative or under other arrangements (unsuitability of informal care is defined as care that would not meet the physical or psychological needs of the child);~~

~~the unavailability of appropriate and affordable formal child care arrangements (affordable care is defined as care that would provide access to a full range of child care categories and types of providers; and appropriate care is care that meets the health and safety standards as defined by State licensing guidelines, as well as the needs of the parents and children).~~

~~Parents who claim an inability to obtain needed child care must contact a DSS worker to press their claim.~~

PROPOSED REGULATIONS

~~Parents will have 10 days, either from the date when they first attempted to find child care or ten days from the date DSS instructed them to participate in work activities, to contact the worker. DSS staff will have 20 days to review and decide whether the parents have a legitimate claim. If DSS determines that the parents did not demonstrate their claim, workers are to impose the sanctions. DSS will not sanction parents who have demonstrated their claims. Document reasons in DCIS under Case Remarks.~~

This policy applies to cases in which one or more parents are required to participate in TANF employment and training activities.

1. The TANF Case Is Sanctioned When A Parent Does Not Complete Their Required Hours.
Each week clients are required to engage in and verify their participation in assigned employment and training activities. The TANF case is sanctioned when a client does not complete the required hours or does not submit the required verification of their hours for any week. The sanction known as a Full Family Sanction or Self-sufficiency Sanction is closure of the TANF case until the sanction is cured or the parent becomes exempt from employment and training requirements.
2. The TANF Case Is Sanctioned When A Needy Non-Parent Caretaker Does Not Complete Their Hours.
Each week clients are required to engage in and verify their participation in assigned employment and activities. The TANF case is sanctioned when a needy non-parent caretaker does not complete the required hours or does not submit the required verification of their hours for any week. The sanction is removal of the caretaker from the grant until the sanction is cured or the caretaker becomes exempt from employment and training requirements.

3011.2.1 Sanctioning When Child Care Is Not Available

This policy applies to TANF cases with a single custodial parent caring for a child under age six and the parent is required to participate in TANF employment and training activities.

1. A Parent Who Is Unable To Obtain Child Care Is Not Sanctioned
A Full Family Sanction is not applied to a TANF case when the parent demonstrates that child care is not available.
2. A Parent Must Demonstrate Child Care Is Not Available.
Credible evidence of any one of the following conditions demonstrates that child care is not available.
 - a. Appropriate child care is unavailable within a reasonable distance from their home or work. Reasonable distance is defined as care that is located in proximity to either a parent's place of employment or the parent's home; generally care that is within a one hour drive from either the home or work.
 - b. Informal child care by a relative or under other arrangements is unavailable or unsuitable. Informal care is considered unsuitable if the care would not meet the physical or psychological needs of the child.
 - c. An appropriate and affordable formal child care arrangement is not available.
Affordable care is defined as care that would provide access to a full range of child care categories and types of providers; appropriate care is care that meets the health and safety standards as defined by State licensing guidelines, as well as the needs of the parent and child.
3. A Parent Must Report That Child Care Is Not Available Within Ten (10) Days.
Parents who claim an inability to obtain needed child care must contact a DSS worker to press their claim. Parents have ten (10) days, either from the date when they first attempted to find child care or ten (10) days from the date DSS instructed them to participate in work activities.
4. DSS Will Decide On A Parent's Claim Of Child Care Unavailability Within Twenty (20) Days.
DSS staff have twenty (20) days to review and decide whether the parent's claim that child care is not available is legitimate. If DSS determines that the parents did not demonstrate their claim, DSS will impose applicable sanctions if the family has not met the employment and training requirement. DSS workers will document in the client's record the client's claim and their legitimacy determination.
5. Families Are Not Exempt From TANF Work Requirements Or Time Limits

While a parent may not be sanctioned as a result of child care being unavailable, the parent is not exempt from TANF work participation requirements or the TANF time limits.

3011.3 ~~Curing Sanction Penalties~~ Curing a Full Family Sanction

~~Clients must keep appointments with Employment and Training staff, complete the Employability Development Plan and follow through with the recommendations of the Employment and Training staff for a minimum period of one month, including four consecutive weeks of the required amount of hours for that household 30,35, or 55 hours of participation.~~

~~Clients, unless indicated otherwise, must participate in the work and/or work related activities for a minimum period of four consecutive weeks.~~

~~EXAMPLE: A client fails to meet the required hours of participation and is sanctioned. In order to cure this sanction, the client must contact the Employment and Training staff, and follow through with her work activity for 30, 35, or 55 hours a week (client's required hours) for a minimum period of four consecutive weeks before the sanction is considered cured.~~

~~DSS expects employable adults to participate in either employment or activities related to finding work (e.g., employment and training activities) for TANF benefits to continue uninterrupted. Either an employable adult is working or is participating in activities to secure employment. The failure of clients to maintain either of these activities is a sanctionable offense.~~

This policy applies to TANF cases that have been sanctioned as a result of not meeting the TANF requirements for employment and training.

1. Mandatory Employment And Training Participants Must Work With An Assigned Vendor.

To cure the sanction clients must work with an assigned employment and training vendor. The vendor will develop a plan with the client that specifies the weekly activities and hours the client must complete to be in compliance with the TANF program. Based on family composition clients are generally required to complete twenty (20), thirty (30), or forty (40) hours per week of approved activities.

2. Clients Must Complete Four (4) Consecutive Weeks Of Participation.

To cure the Full Family Sanction clients must complete and submit required verification of their required activities and hours to the employment and training vendor. They must complete four (4) consecutive weeks of full participation.

For the TANF program purposes a week is a seven (7) day period which begins on Monday and ends on Sunday.

3. The TANF Case Reopens At The Beginning Of The Four (4) Week Cure Period.

When the TANF family has remained technically and financially eligible for TANF during the cure sanction period, once the requirement of four (4) consecutive weeks of full and verified participation has been completed the TANF case will reopen effective the first day of the four (4) week cure sanction period.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) and (d), 903(e)(2)a and (e)(3);
(7 Del.C. §§901(c) and (d), 903(e)(2)a and (e)(3))
7 DE Admin. Code 3507

REGISTER NOTICE SAN#: 2014-01

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

1. TITLE OF THE REGULATIONS:

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas (12.0 & 12.1)

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

This action is to adopt provisions consistent with the proposed federal rule for the recreational black sea bass fishery and remain compliant with Addendum XXV to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass.

Black sea bass are managed cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council (MAFMC) and the National Marine Fisheries Service through the joint Summer Flounder, Scup and Black Sea Bass Fishery Management Plan. The ASMFC and MAFMC jointly approved a coastwide recreational black sea bass harvest limit for 2014 of 2.26 million pounds (1,189,474 fish) at their December 11, 2013 meeting. The ASMFC approved the continuation of ad hoc regional management measures under Addendum XXV at their February 4, 2014 meeting.

Addendum XXV requires the southern region states (Delaware to North Carolina) to implement recreational fishery management measures for black sea bass consistent with those measures required for federal waters. The National Oceanic and Atmospheric Administration's (NOAA) recommended federal recreational black sea bass measures for 2014 include a 12.5 inch minimum size limit, a 15 fish possession limit and open seasons from May 19 - September 18 and October 18 - December 31. These measures when combined with measures being implemented in the northern region (Massachusetts through New Jersey) will achieve the 2014 coastwide recreational harvest limit.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §§901 (c), 901(d), 903(e)(2)a, & 903 (e)(3)

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to the black sea bass regulation will be open March 1, 2014. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302)739-9042. A public hearing on the proposed amendment will be held, in conjunction with the public hearing on a proposed summer flounder amendment, on March 26, 2014 beginning at 6:00 PM in the Dover Public Library, located at 35 Loockerman Plaza, Dover, DE 19901.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914

David E. Saveikis, Director

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve and one-half (12.5) inches total length excluding any caudal filament.
- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred to an eligible transferee as defined in 7 Del.C. §2903, unless there is a

written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.
- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 pertaining to black sea bass and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the pot fishery in any year will not exceed six.
- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the commercial hook and line fishery in any year will not exceed thirteen.
- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.
Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.
- 8.0 Each participant in a black sea bass fishery shall be assigned an equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.
- 9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:
- 9.1 A maximum of one transfer per year per person.
- 9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.
- 10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:
- 10.1 A maximum of one transfer per year per person.
- 10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.
- 11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each day's landings in pounds at least one hour after packing out their harvest.
- 12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01 a.m. January 1, and ending midnight May 18, and beginning at 12:01 a.m. ~~October 15~~ September 19 and ending mid-night ~~October 31~~ 17.
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than ~~20~~ 15 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period May 19 through ~~October 14~~ September 18 and during the period ~~November 4~~ October 18 through December 31.

PROPOSED REGULATIONS

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) and (d), 903(e)(2)a and (e)(3);
(7 Del.C. §§901(c) and (d), 903(e)(2)a and (e)(3))
7 DE Admin. Code 3511

REGISTER NOTICE SAN#: 2014-02

3511 Summer Flounder Size Limits; Possession Limits; Season**1. TITLE OF THE REGULATIONS:**

3511 Summer Flounder Size Limits; Possession Limits; Season

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

This action is to consider amending Delaware's summer flounder (*Paralichthys dentatus*) regulation for consistency with Addendum XXV to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass. It is anticipated that the amendment will include a liberalization of the recreational minimum size limit.

Summer flounder are managed cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council (MAFMC) and the National Marine Fisheries Service through Amendment 13 to the joint Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda. The ASMFC and MAFMC jointly approved a coastwide recreational summer flounder harvest limit for 2014 of 7.01 million pounds (2,421,720 fish) at their December 11, 2013 meeting. The ASMFC approved a regional management approach for states under Addendum XXV at its February 4, 2014 meeting.

Under the regional management approach, states within a region are required to establish the same size and possession limits. Delaware is in a region with Maryland and Virginia. It is anticipated that Delaware will be required to change its existing recreational 17-inch minimum size limit to a 16-inch recreational minimum size limit. Further, it is anticipated that there will be no change in Delaware's present four fish recreational possession limit or year-round recreational summer flounder season. Although unlikely, it should be noted that these proposed measures are subject to change pending the release of additional recreational landings data.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §§901(c), 901(d), 903(e)(2)a, and 903(e)(3)

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to §3511 Summer Flounder Size Limits; Possession Limits will be open March 1, 2014. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held, in conjunction with the public hearing on a proposed black sea bass amendment, on March 26, 2014 beginning at 6:00 PM in the Dover Public Library, located at 35 Loockerman Plaza, Dover, DE 19901.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914

David E. Saveikis, Director

3511 Summer Flounder Size Limits; Possession Limits; Season

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 It shall be unlawful for any recreational fisherman to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.
- 2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~seventeen (17)~~ sixteen (16) inches between the tip of the snout and the furthest tip of the tail.
- 3.0 It shall be unlawful for any person, to have in possession any part of a summer flounder that measures less than ~~seventeen (17)~~ sixteen (16) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.
- 4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:
 - 4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;
 - 4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or
 - 4.3 A bill of lading while transporting fresh or frozen summer flounder.
 - 4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.
- 5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.
- 6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.
- 7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 **Del.C.** §1106(a)(1))
24 **DE Admin. Code** 1100

PUBLIC NOTICE**1100 Board of Dentistry and Dental Hygiene**

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** §1106(a)(1), proposes to amend its regulations. The proposed changes identify when a successful practical clinical examination score expires thus requiring a new applicant to re-take the exam. The changes also eliminate language from regulation 10 which is redundant with the statute.

The Board will hold a public hearing on the proposed rule change March 27, 2014 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, Suite

203, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 14, 2014.

1100 Board of Dentistry and Dental Hygiene

(Break in Continuity of Sections)

10.0 ~~Eligibility to Take the Practical (Clinical) Examination~~

~~Authority. Pursuant to Title 24, Section 1106(a)(1), The Board of Dentistry and Dental Hygiene is empowered to formulate rules and regulations to implement or clarify Chapter 11 relating to dentistry and dental hygiene.~~

~~Purpose. This regulation clarifies eligibility to take the practical (clinical) examination in dentistry and dental hygiene administered by the Board and identifies when successful examination scores expire.~~

- 10.1 No person shall be eligible to take the practical (clinical) examination in dentistry administered by the Delaware Board of Dentistry and Dental Hygiene unless the applicant has received a degree in dentistry from an accredited dental college or university accredited by the Commission on Dental Accreditation of the American Dental Association.
- 10.2 No person shall be eligible to take the practical (clinical) examination in dental hygiene administered by the Delaware Board of Dentistry and Dental Hygiene unless the applicant has graduated from a dental hygiene college or university program accredited by the Commission on Dental Accreditation of the American Dental Association of at least 2 academic years' duration or has graduated, prior to 1953, from a dental hygiene program of at least 1 year's duration which program had been approved by the Board at the time of the person's graduation.
- 10.3 The Board reserves the right to waive the requirement set forth above in sections 10.1 and 10.2 if the Applicant can establish to the satisfaction of the Board's Credentialing Committee that he or she is a student in good standing in an educational facility accredited by the Commission on Dental Accreditation of the American Dental Association and will graduate within sixty (60) days of the administration of the practical (clinical) examination with a degree in dentistry or dental hygiene.
- 10.4 Dentistry or dental hygiene candidates, other than dental hygiene candidates who qualify for licensure under 24 Del.C. §1124, must have passed the applicable practical clinical examination within five years of application for licensure in Delaware. The Board reserves the right to waive this requirement for just cause.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

1100 Board of Dentistry and Dental Hygiene

DIVISION OF PROFESSIONAL REGULATION Polysomnography Advisory Council

Statutory Authority: 24 Delaware Code, Section 1799W(c) (24 Del.C. §1799W(c))

PUBLIC NOTICE

1725 Polysomnography Advisory Council

The Polysomnography Advisory Council, pursuant to 24 Del.C. §1799W(c), proposes to adopt the following regulations governing the practice of polysomnography in the State of Delaware. As a newly created Council, regulating a profession that first required licensure by virtue of legislation enacted September 12, 2012, these regulations are comprehensive, and all newly created.

The Council will hold a public hearing on the proposed regulation change on March 28, 2014 at 1:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Shauna Slaughter, Executive Director of the Delaware Polysomnography Advisory Council, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 18, 2014 pursuant to 29 Del.C. §10118(a).

1725 Polysomnography Advisory Council

1.0 Purpose

The purpose of these regulations is to establish minimal standards of education, experience and examination for professional polysomnographers to ensure licensees practice with reasonable skill and safety in order to protect the health of the public while broadening access to competent, professional polysomnography services.

2.0 Definitions

“Board” means Delaware Board of Medical Licensure and Discipline.

“Council” means the Polysomnography Advisory Council of the Board of Medical Licensure and Discipline.

“Out of Center Sleep Testing” means analyzing and scoring polysomnographic data collected outside of a sleep center for the purposes of assisting a licensed medical doctor in the diagnosis and treatment of sleep and wake disorders. Out of Center Sleep Testing includes remote monitoring as well as Home Sleep Testing.

“Polysomnographer” means a professional duly licensed by the Delaware Polysomnography Advisory Council of the Board of Medical Licensure and Discipline.

3.0 Standards of Practice for the Polysomnographer

- 3.1 The polysomnographer shall conduct and document polysomnography assessments of individuals and groups by various appropriate means including but not limited to the following:
 - 3.1.1 Collecting objective and subjective data from observations, examinations, physiologic tests, interviews and written records in an accurate and timely manner;
 - 3.1.2 Sorting, selecting, reporting, and recording the data;
 - 3.1.3 Analyzing data;
 - 3.1.4 Validating, refining and modifying the data by using available resources including interactions with the patient, family, and health team members;
 - 3.1.5 Evaluating data.
- 3.2 Polysomnographers shall establish and document data that serves as the basis for the strategy of care.
- 3.3 Polysomnographers may develop strategies of care such as a treatment plan.
- 3.4 Polysomnographers may participate under the direction and supervision of a physician in the implementation of patient care.
- 3.5 The practice of polysomnography may occur in a hospital setting, independent sleep laboratory, and includes out of center sleep testing. In the case of out of center sleep testing, the practice of polysomnography shall be deemed to be occurring where the patient is located.

4.0 Standards Related to the Polysomnographer’s Competence and Responsibilities

- 4.1 Polysomnographers shall:
 - 4.1.1 Have knowledge of the statutes and regulations governing the practice of polysomnography;
 - 4.1.2 Accept responsibility for competent practice of polysomnography;
 - 4.1.3 Function as a member of a health care team by collaborating with other members of the team to provide appropriate care;
 - 4.1.4 Consult with polysomnographers and others and seek guidance as necessary;
 - 4.1.5 Obtain instruction and supervision as necessary when implementing polysomnography techniques;
 - 4.1.6 Contribute to the formulation, interpretation, implementation and evaluation of objectives and policies related to the practice of polysomnography within the employment setting;
 - 4.1.7 Report unsafe polysomnography practice or conditions to the Council or other authorities, as appropriate;

PROPOSED REGULATIONS

- 4.1.8 Practice without unlawful discrimination as to age, race, religion, sex, national origin or disability;
 - 4.1.9 Respect the dignity and rights of patients regardless of social or economic status, personal attributes or nature of health problems;
 - 4.1.10 Respect patients' right-to-privacy by protecting confidentiality unless obligated by law to disclose the information;
 - 4.1.11 Respect the property of patients and their families;
 - 4.1.12 Teach safe polysomnography practice to other health care workers as appropriate.
- 4.2 Polysomnographers must provide the Division of Professional Regulation his/her current home mailing address. Any change in home mailing address must be reported to the Division within ten days of such change. All notifications and correspondence pertaining to a polysomnographer's license that are sent through the mail will be sent only to the most recent address provided by the licensee. The failure to provide the Division with a current home mailing address will not operate to excuse any duty or responsibility of the licensee and confirmed delivery to the most recent address provided by the licensee will be considered proper notice.

5.0 **Disciplinary Proceedings**

- 5.1 The license of a polysomnographer found to have committed unprofessional conduct may be subject to revocation, suspension, probation, denial, non-renewal, fine, censure, or a letter of reprimand.
- 5.2 Unprofessional conduct includes any act of fraud, deceit, incompetence, negligence, dishonesty or other behavior in the licensee's professional activity which is likely to endanger the public health, safety, or welfare including, without limitation, the following:
- 5.2.1 Performing acts beyond the scope of authorized practice by a polysomnographer to include violations of 24 **Del.C.** §1799AA *et seq.* or of these regulations;
 - 5.2.2 Assuming duties and responsibilities within the practice of polysomnography without adequate preparation or supervision or when competency has not been maintained;
 - 5.2.3 Performing new polysomnographic techniques and/or procedures without adequate education and practice or without proper supervision;
 - 5.2.4 Failing to take appropriate action or follow policies and procedures in the practice situation designed to safeguard the patient from incompetent, unethical or illegal health care practices;
 - 5.2.5 Inaccurately recording on, falsifying or altering a patient or agency record;
 - 5.2.6 Committing verbal, physical or sexual abuse or harassment of patients or co-employees;
 - 5.2.7 Assigning unqualified persons to perform the practice of licensed polysomnographers;
 - 5.2.8 Delegating polysomnography responsibilities to unqualified persons;
 - 5.2.9 Failing to supervise persons to whom polysomnographic responsibilities have been properly delegated;
 - 5.2.10 Leaving a patient assignment in circumstances which endangers the patient except in documented emergency situations;
 - 5.2.11 Failing to safeguard a patient's dignity and right to privacy in providing polysomnography services which shall be provided without regard to race, color, creed or status;
 - 5.2.12 Violating the confidentiality of information concerning a patient except where disclosure is required by law;
 - 5.2.13 Practicing polysomnography when unfit to perform procedures and make decisions when physically, psychologically, or mentally impaired;
 - 5.2.14 Diverting drugs, supplies, or property of a patient or agency or attempting to do so;
 - 5.2.15 Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs or attempting to do so;
 - 5.2.16 Providing polysomnography services in this State without a currently valid license or without other lawful authority to do so;

- 5.2.17 Allowing another person to use his/her license to provide polysomnography services for any purpose;
- 5.2.18 Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule or regulation intended to guide the conduct of a polysomnographer or other health care provider;
- 5.2.19 Resorting to, or aiding in any fraud, misrepresentation or deceit directly or indirectly in connection with acquiring or maintaining a license to practice polysomnography;
- 5.2.20 Failing to report unprofessional conduct by another polysomnographer licensee;
- 5.2.21 Failing to provide polysomnography to a patient in accordance with the orders of the responsible physician without just cause;
- 5.2.22 Violating a lawful provision of Title 24, Chapter 17 or any lawful regulation established thereunder.

6.0 Polysomnographic Students and Polysomnographic Trainees

- 6.1 A polysomnographic student may only practice under the direct supervision of a licensed polysomnographer.
- 6.2 Direct supervision means that a licensed polysomnographer will be personally present and immediately available within the treatment area to provide aid, direction, and instruction when procedures are performed. All evaluations, progress notes, and/or chart entries must be co-signed by a licensed polysomnographer.
- 6.3 A polysomnographic trainee may provide sleep-related services under the direct supervision of a licensed polysomnographer as part of the trainee's clinical experience for no more than two years following his/her completion of an approved accredited educational program.

7.0 Continuing Education

- 7.1 Continuing Education Hours Required for Renewal
 - 7.1.1 The polysomnographer shall be required to complete twenty hours of continuing education acceptable to the Council biennially.
 - 7.1.2 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of this Rule.
 - 7.1.3 Attestation may be completed electronically at the time of online renewal.
 - 7.1.4 The polysomnographer shall retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes.
 - 7.1.5 Continuing education hours shall be prorated for new licensees in accordance with the following schedule: Two years remaining in the licensing cycle requires twenty hours. One year or more, but less than two years, remaining in the licensing cycle requires ten hours. Licensees obtaining initial licensure with less than one year remaining in the licensing cycle are exempt from the continuing education requirement.
- 7.2 Exemptions and Extensions
 - 7.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply to the Council for a waiver. A waiver may provide for an extension of time or an exemption from some or all of the continuing education requirements for one renewal period. A separate request must be submitted for every renewal period during which a waiver is requested.
 - 7.2.2 A request for a waiver must be submitted sixty days prior to the license renewal date.
 - 7.2.3 Requests for Extension - Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve months to make up all outstanding required hours providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the

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reason for such extension along with whatever documentation he/she feels is relevant. The Council shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must be received prior to the renewal deadline. The Council shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required hours. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Council. Make-up credits may not be used in the next renewal period.

7.3 Acceptable Continuing Education. The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is whether the program is a planned program of learning that contributes directly to the professional competence of the polysomnographer. Continuing education hours awarded for activities/programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:

7.3.1 The American Academy of Sleep Medicine

7.3.2 The American Association of Sleep Technologists

7.3.3 Other professional or education organizations so long as the specific program is acceptable to the Council.

7.4 Audit of Continuing Education Hours

7.4.1 Audit. Each biennium, the Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage of licensees, determined by the Council, to be audited. The Council may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.

7.4.2 Documentation. When a licensee is selected for audit, the licensee shall be required to submit documentation showing detailed accounting of the various hours claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (*i.e.*, certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Council shall attempt to verify the hours shown on the documentation provided by the licensee. Upon completion of the review, the Council will determine whether the licensee's hours meet the requirements of these rules.

7.4.2.1 Any continuing education not meeting all provisions of these rules shall be rejected in part or in whole by the Council.

7.4.2.2 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council.

7.4.2.3 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.

7.4.3 Council Review and Hearing Process. The Council shall review all documentation requested of any licensee shown on the audit list. If the Council initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing will be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if the licensee has met the requirement and if not, if there are any extenuating circumstances justifying the noncompliance with these requirements. Unjustified noncompliance with these regulations shall be considered unprofessional conduct in the practice of polysomnography and subject to discipline.

7.4.4 Sanctions for Unjustified Noncompliance. The minimum penalty for the first finding of unjustified noncompliance shall be a letter of reprimand and a \$250.00 monetary penalty. The minimum penalty for the second finding of unjustified noncompliance shall be a thirty-day license suspension.

8.0 Application for a License

- 8.1 Application. An application for a license to practice polysomnography must be completed on a form provided by the Council and returned to the Division of Professional Regulation with the required, non-refundable fee.
- 8.2 An application for a license to practice polysomnography shall be considered completed when the Division has received the following documentation:
 - 8.2.1 Non-refundable application fee
 - 8.2.2 Completed application for licensure
 - 8.2.3 Verification of education form
 - 8.2.4 Verification of passage of an exam accredited by an independent outside agency that has been approved by the Council. The following exams have been approved by the Council:
 - 8.2.4.1 Board of Registered Polysomnographic Technologists CPSGT exam
 - 8.2.4.2 Board of Registered Polysomnographic Technologists RPSGT exam
 - 8.2.4.3 National Board of Respiratory Care SDS exam
 - 8.2.4.4 Any other exam accredited by an independent outside agency as approved periodically by the Council.
 - 8.2.5 Verification of active credentials in good standing as either a Board of Registered Polysomnographic Technologists CPSGT, RPSGT, or as a National Board of Respiratory Care SDS.
 - 8.2.6 Verification of Basic Life Support certification that includes hands on skills training.
 - 8.2.7 Letters of good standing from all other states where the applicant is licensed, if applicable.
 - 8.2.8 Applicants for licensure by endorsement must provide the statute and regulations pertaining to the licensure requirements for polysomnographers in the state where the applicant currently holds a license so a determination may be made as to whether the licensing requirements of that state are substantially similar to or exceeding the requirements for licensure in Delaware.
 - 8.2.9 Any other information requested in the application.

9.0 Renewal of Licenses

- 9.1 Each license shall be renewed biennially. The failure of the Council to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her license.
- 9.2 Renewal may be effected by:
 - 9.2.1 filing a renewal application online at www.dpr.delaware.gov;
 - 9.2.2 attesting on the renewal application to completing the continuing education as required by these Rules;
 - 9.2.3 payment of fees determined by the Division of Professional Regulation;
 - 9.2.4 attesting that the licensee has active credentials in good standing as either a Board of Registered Polysomnographic Technologist CPSGT, RPSGT, or as a National Board of Respiratory Care SDS; and
 - 9.2.5 attesting that the licensee has a current Basic Life Support certification that includes hands on skills training.
- 9.3 Failure of a licensee to renew his/her license shall cause his/her license to expire.
 - 9.3.1 A license which has expired may, within a period of sixty days thereafter, be reinstated upon payment of all fees as set by the Division of Professional Regulation of the State of Delaware and by the applicant providing documentation establishing that he/she has completed 20 hours of continuing education during the two-year period preceding the application for reinstatement, and that he/she has active credentials in good standing as either a Board of Registered Polysomnographic Technologist CPSGT, RPSGT, or as a National Board of Respiratory Care SDS and a current Basic Life Support certification that includes hands on skills training.

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9.4 A license may be placed on inactive status at the request of a licensee for no more than five years. An inactive license will convert to expired if it is not reinstated within five years.

9.4.1 An inactive license may be reinstated if the licensee provides all of the following:

9.4.1.1 Payment of the reinstatement fee established by the Division of Professional Regulation;

9.4.1.2 Verification of active credentials in good standing as either a Board of Registered Polysomnographic Technologists CPSGT, RPSGT, or as a National Board of Respiratory Care SDS; and

9.4.1.3 Verification of Basic Life Support certification that includes hands on skills training.

10.0 Responsibilities of Supervisors and Polysomnographic Students and Trainees

10.1 A licensed polysomnographer serving as a supervisor to either a polysomnographic student or trainee accepts total responsibility for the sleep-related services provided by the student or trainee.

10.2 A student or trainee is permitted to have more than one supervising licensed polysomnographer.

10.3 Only licensed polysomnographers in good standing may supervise students or trainees.

10.4 A licensed polysomnographer may supervise no more than three students or trainees at one time.

11.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals – The Delaware Professionals' Health Monitoring Program

11.1 If information regarding a suspected chemically dependent or impaired licensee is received by the Council, the Council shall immediately notify the Division of Professional Regulation.

11.2 Upon receipt of information concerning a suspected chemically dependent or impaired licensee, the Division of Professional Regulation or its designee shall contact the licensee and inform him or her of the report, provide the licensee information describing the Delaware Professional Health Monitoring Program (DPHMP), and give him or her the opportunity to enter the DPHMP.

11.3 In order for the licensee to participate in the DPHMP, he/she shall execute a monitoring agreement.

11.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the DPHMP and continue to practice, subject to any limitations on practice imposed by either the DPHMP or the Council following a determination that disciplinable conduct has occurred.

11.5 Failure to cooperate fully with the DPHMP, the Division, or any employee of the same, or to comply with their requests for evaluations and screens may disqualify the licensee from the provisions of the DPHMP and there may be activated an immediate investigation and institution of disciplinary proceedings, if appropriate.

11.6 The DPHMP may require a licensee to execute a monitoring agreement that includes, but is not limited to, the following provisions:

11.6.1 Evaluation and entry into a treatment program;

11.6.2 Consent of the licensee, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program;

11.6.3 Agreement by the licensee to be personally responsible for all costs and charges associated with the DPHMP and any associated treatment programs;

11.6.4 Agreement by the licensee that failure to satisfactorily progress shall be reported to the Division of Professional Regulation for investigation and the institution of disciplinary proceedings;

11.6.5 Compliance with any terms or restrictions placed on professional practice as outlined in the monitoring agreement under the DPHMP.

11.7 The licensee's records of participation in the DPHMP will not reflect disciplinary action if the licensee voluntarily entered the Program and shall not be considered public records open to public inspection. However, the Council may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

11.8 Any licensee who complies with all of the terms and completes the DPHMP shall have his/her confidentiality protected.

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed bold-stricken through]**~~ indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the **Register of Regulations**. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the **Register of Regulations**, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 275

REGULATORY IMPLEMENTING ORDER

275 Charter Schools

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 275 Charter Schools. The amendments reflect revisions in the regulation regarding the administration of the new Performance Fund, as well as other amendments to align with specific Delaware Code revised during the 147th General Assembly.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on December 7, 2013, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Additionally, comments were made during the discussion at the State Board of Education meeting in December. The comments were related to the definition of "high-needs students," standards for the "eligibility requirements" and "criteria to evaluate applications." The Department has made changes to the regulation to address the definition of "high-needs students" to expand to English Language Learners and Students with Disabilities. The application and rubric for the performance fund has been shared with the State Board of Education and will be available on the Delaware Department of Education website.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 275 Charter Schools in order to further

clarify the definition of "High Needs Students" as defined in the proposed regulation (Exhibit B). In addition, the amended regulation clarifies the approval process for awarding of funds, and provides additional clarification on entities that may be awarded funds, and the timing for the awarding of funds for entities seeking a charter in Delaware.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 275 Charter Schools. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 275 Charter Schools attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 275 Charter Schools hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 275 Charter Schools amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 275 Charter Schools in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **February 20, 2014**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 20th day of February 2014.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this ____ day of _____ 2014

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

275 Charter Schools

(Break in Continuity of Sections)

2.0 Definitions

2.1 The following definitions apply for purposes of interpreting the Charter School Law and these regulations:

(Break in Continuity Within Section)

"High-Need Students": means students that qualify as low economic status pursuant to Department determination[, to include Students with Disabilities and English Language Learners].

(Break in Continuity of Sections)

14.0 Performance Fund ~~RESERVED~~

14.1 Eligible applicants may apply to the Department for grants from the Charter School Performance Fund established pursuant to 14 **Del.C.** §509(m).

14.2 Eligibility

14.2.1 In order to be eligible to apply for funds, an applicant shall be:

14.2.1.1 A Delaware charter school that meets or exceeds the expectations established in its Performance Agreement as measured by Performance Framework; or a school receives a satisfactory performance review[; or;]

14.2.1.2 A Delaware corporation seeking to establish a charter school in Delaware, including but not limited to an out of state charter school or other partnering organization with a proven track record of academic, operational and financial success.

14.3 Criteria to Evaluate Applications for Funding

14.3.1 In addition to the eligibility considerations set forth in Section 14.2 of these regulations, the Department shall further establish criteria for evaluating applications for funding and shall prioritize applications from applicants that have:

14.3.1.1 Developed high-quality plans for start-up or expansion; or

14.3.1.2 Serve high-need students, as defined in 2.1 of this regulation.

14.3.2 In evaluating applications, the Department shall also consider the availability of supplemental funding to the applicant from non-state sources.

14.4 Applications for Funding

14.4.1 The Department will establish and utilize a process for annually soliciting and reviewing applications for funding that is consistent with these regulations and pursuant to pursuant to 14 Del.C. §509(m). The application and evaluating criteria rubric shall be published on the Department's public website.

14.5 Awards

14.5.1 The Department has the authority to determine the number of grantees, the size of awards and to determine which applications, if any, shall be approved. The Department's determinations are final ~~[and not subject to review or State Board of Education appeal].~~

[14.5.2 No award shall be provided to an applicant that is not a current Charter Holder.]

14.6 Submission of Applications and Award Notifications

14.6.1 Funding applications shall be submitted to the Department in a format acceptable under the Department's published application process, no later than the deadlines published by the Department annually. The Department shall inform all applicants as to whether or not their application has been approved in accordance with those deadlines and post the approved applicants applications as required.

***Please note that no additional changes were made to the regulation as originally proposed and published in the December 2013 issue of the *Register* at page 588 (17 DE Reg. 588). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

275 Charter Schools

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 502

REGULATORY IMPLEMENTING ORDER

502 Alignment of Local School District Curricula to the State Content Standards

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 DE Admin. Code 502 Alignment of Local School District Curricula to the State Content Standards. The amendments reflect process changes related to the demonstration of alignment of local school district curricula to the state content standards. This reduces the burden on the districts

as well as the Department and also provides for flexibility based on the uniqueness of each district related to the development of local curricula.

Notice of the proposed regulation was given by publication in the Delaware *Register of Regulations*, Volume 17- Issue 7, pages 679 - 683, on January 1, 2014. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The comments were considered and minor amendments were made. The Councils articulated a concern with the change from a very prescriptive nature to one that is "less prescriptive/rigid and rigorous." The Councils endorsed the specific requirements related to specific student populations. The DDOE has reviewed the previous structure and considers the proposed process to allow for any needed evidence to ensure curriculum alignment. One comment was related to the "Survey of Enacted Curriculum." The completion of this survey was one of a number of options. A change has been regarding when the documentation for alignment may be reviewed.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards in order to reduce the burden on the districts as well as the Department and to provide for flexibility based on the uniqueness of each district related to the development of local curricula.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards amended hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on February 14, 2014. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

IT IS SO ORDERED the 14th day of February 2014.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 14th day of February 2014

502 Alignment of Local School District Curricula to the State Content Standards

1.0 Purpose

- 4-4 The purpose of this regulation is to provide a process through which all Delaware school districts demonstrate the alignment of their local curricula with the State Content Standards in the content areas specified in the 14 **DE Admin. Code** 501.

2.0 Definitions

“Adoption” means to accept a set of standards as the basis for curriculum and assessment alignment across the state according to a timeline established and disseminated by the Department of Education.

“Alignment Index” means a co-relational measure of alignment between the Survey of Enacted Curriculum in a specific content area and the state standards used for comparison. The Wisconsin Center for Educational Research automatically calculates and reports the alignment index to schools and districts that use the surveys.

“Content Map” means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.

“Department” means the Delaware Department of Education.

“Evidence” means certification by the district that **[their its]** curriculum is aligned to the state content standards, which is supported by documentation maintained by the district.

“Grade Level Expectations” means the documents created and officially released by the Delaware Department of Education for English language arts, mathematics, science, and social studies which detail student learning objectives in each content area for kindergarten through grade twelve.

“Recommended Statewide Uniform Curricula” means one or more of the following documents: Academic Content Standards, Clarifications[,] and Grade Level Expectations posted to the Delaware Department of Education website. The Department may update the document(s) based on changes to the State Content Standards in 14 **DE Admin. Code 501**.

“Scope and Sequence” means a curriculum plan, usually in chart form, with a range of instructional objectives and skills organized according to the successive levels at which they are taught.

“Statewide Recommended Curriculum Frameworks” means the Delaware Recommended Curriculum documents comprised of Academic Content Standards, Clarifications and Grade Level Expectations posted to the Delaware Department of Education website.

“Survey of Enacted Curriculum (SEC)” means the alignment survey sponsored by the Council of Chief State School Officers and the Wisconsin Center for Education Research. The SEC is a teacher survey tool based on scientifically based research which yields detailed information about the alignment of classroom instruction to state academic standards and state assessments. The survey is available for English language arts, mathematics, and science at the present time. A survey for social studies is in development. An analysis of results by grade level, school and district is completed by the Wisconsin Center for Educational Research with formal reports provided to the participating schools and districts.

“Tile Chart” means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.

“Unit Summative Assessment” means a performance measure of skills and knowledge mastered by students at the end of a unit as a result of classroom instruction. Examples of unit assessment measures include but are not limited to teacher constructed unit tests and commercially published measures such as those provided by curriculum publishers.

3.0 Alignment Requirement

- 3.1 All school districts shall provide evidence to the Department that their school district curricula are aligned with the State Content Standards. State Content Standards exist in English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts, Health, Physical Education, Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and **[the]** Family and Consumer Sciences. Content standards ~~as developed~~ adopted by the Department in the future shall also be included under this section

4.0 Use of the Statewide Recommended Curricula Frameworks

- 4.1 ~~School districts shall utilize the Statewide Recommended Curricula Frameworks including the State Content Standards, Content Area Clarifications and Grade Level Expectations as guides to the development or revision of their local curricula, syllabi, and Scope and Sequence in the content areas listed in 3.0.~~

54.0 Documentation of Curriculum Alignment

- 5.1 ~~Evidence of curriculum alignment to the State Content Standards shall be submitted to the Department no later than twelve (12) months following the official release by the Department of the Statewide Recommended Curriculum Frameworks in each content area.~~
- 5.2 ~~Documentation of alignment of school district curriculum to the State Content Standards shall be submitted through evidence provided by the school districts on forms as developed and required by the Department.~~
- 5.3 ~~Evidence of curriculum alignment submitted by school districts shall be subject to Department review during on-site monitoring visits.~~
- 4.1 Alignment of school district curricula to the State Content Standards shall be certified annually by the district through an assurance in the consolidated grant application.
- 4.2 Documentation of alignment of school district curricula shall include: unit plans, lesson plans, and assessments[:] and may be subject to Department review ~~[during on-site monitoring visits].~~ Included in the documentation shall be a description of the method and level of involvement in the alignment process by building administrators, teachers and specialists.
- 4.3 Documentation for Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and ~~[the]~~ Family and Consumer Sciences shall follow requirements ~~[through in]~~ 14 DE Admin. Code 525 for Career and Technical Education.

5.0 Documentation for Specific Student Populations

As part of its documentation, the district shall explain modifications or enhancements to curricula for specific subgroups such as students with disabilities, gifted students, English learners or any other special population of students and certify alignment to the State Content Standards.

6.0 Criteria for the Evaluation of the Alignment

- 6.1 ~~School districts shall be required to submit evidence of local curriculum alignment for English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts, Health, and Physical Education content areas for each grade cluster K to 2, 3 to 5, 6 to 8 and 9 to 12 from at least two of the permissible categories of evidence in 6.1.1 through 6.1.5. **One** of the two categories shall be the evidence described in 6.1.1. The second required category and any additional submitted evidence shall be selected by the district from categories 6.1.2 through 6.1.5. The school district may choose to vary the choice of the second category of evidence by grade cluster level. School districts shall be required to submit evidence of local curriculum alignment for Career and Technical Education content areas (Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences) from the permissible category of evidence in 6.1.6. Evidence of alignment to each standard in a given content area shall be submitted.~~
- 6.1.1 ~~Category 1 is a narrative describing the local curriculum alignment evidence and the extent to which it addresses all student subgroups. For English language arts, mathematics, science and social studies, a required element of this narrative shall be an analysis of school district disaggregated student performance data on state assessments over the most recent three year period of available state assessment data.~~
- 6.1.2 ~~Category 2 is the Grade level result (all teachers in at least one grade per grade cluster K to 2, 3 to 5, 6 to 8 and 9 to 12 of the Survey of Enacted Curriculum for the content area under consideration. The SEC results shall demonstrate an Alignment Index of .50 or higher, and include a graphic summary including either a Tile Chart or Content Maps.~~

- ~~6.1.3 Category 3 is three (3) units of study from a specific grade cluster, accompanied by the corresponding summative unit assessment and scoring rubric, and matrix table detailing applicable content standards, grade level expectations and course expectations for all students served in the grade cluster.~~
- ~~6.1.4 Category 4 is an external formal curriculum alignment report detailing a review of local instruction and documentation of standards alignment. The district is required to submit three (3) sample units and three (3) corresponding unit summative assessments, and a narrative detailing how all students served in the grade cluster receive standards aligned instruction. The district is required to submit the curriculum audit contractor's credentials.~~
- ~~6.1.5 Category 5 is a formative assessment benchmarking system with grade cluster Scope and Sequence, including three sample units from the grade cluster. The district is required to submit (1) a narrative detailing evidence of alignment of formative student assessment or assessments to the State Content Standards and (2) sample assessment items in the content area.~~
- ~~6.1.6 Category 6 is curriculum alignment evidence specific to Career and Technical Education content areas. Evidence for Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences shall be submitted as required through 14 DE Admin. Code 525 for Career and Technical Education.~~
- 6.2 Required documentation for specific student subpopulations
- 6.2.1 As part of its submitted evidence, the district shall make detailed comments on the extent to which any modification or enhancement of the instructional program for specific subgroups such as students with disabilities, gifted students, English language learners or any other special population of students is aligned to the State Content Standards in the content area where there have been modifications or enhancements.

7.0 Participation of Building Level Staff

- ~~7.1 All school districts shall describe and document to the Department the method and the level of involvement in the alignment process by their building administrators, teachers and specialists.~~

8.0 Subsequent Review of Alignment

- ~~8.1 Each district shall be required to present evidence of certify curriculum alignment if there are major changes to a content area in the approved curricula. The district shall only be required to submit evidence documentation of curriculum alignment in the affected content area upon request by the Department. Further, districts placed under school improvement may be required to submit evidence documentation of aligned curriculum in the assessed content area or areas which form the basis for the any school improvement rating.~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1517

REGULATORY IMPLEMENTING ORDER

1517 Paraeducator Permit

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1517 Paraeducator Permit. The regulation applies to the issuance of a Paraeducator Permit, pursuant to 14 Del.C. §1205. It is necessary to amend this regulation in order to update and clarify some of the definitions, requirements and to update the application procedures.

Notice of the proposed adoption of the regulation was published in the Delaware *Register of Regulations* on December 1, 2013 through January 31, 2014. The notice invited written comments. Comments were received from the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens. The comments included issues of clarification, as well as some grammar and usage edits in the regulation. The suggested comments were considered by the Board and all necessary edits were made. No additional comments were received regarding the proposed amendments to this regulation.

II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to adopt the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation adopted shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1517 of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 6th DAY OF FEBRUARY, 2014

| | |
|---------------------|-------------------|
| Chris Kenton, Chair | Rosaria Macera |
| Diane Albanese | Byron Murphy |
| Michael Casson | Wendy Murray |
| Joanne Christian | Mary Pinkston |
| Samtra Devard | Whitney Price |
| Stephanie DeWitt | JoAnn Reynolds |
| Cristy Greaves | Stephanie Smith |
| David Kohan | Jacque Wisnauskas |

IT IS SO ORDERED the 20th day of FEBRUARY, 2014.

Department of Education

Mark Murphy, Secretary of Education

Approved 20th day of February, 2014

State Board of Education

| | |
|-----------------------------------|---------------------------|
| Teri Quinn Gray, Ph.D., President | Gregory B. Coverdale, Jr. |
| Jorge L. Melendez, Vice President | Terry M. Whittaker, Ed.D. |
| G. Patrick Heffernan | Randall L. Hughes |
| Barbara B. Rutt | |

1517 Paraeducator Permit

1.0 Content

This regulation shall apply to the issuance of a Paraeducator Permit, pursuant to 14 **Del.C.** §1205(a). This Permit is required of Title I Paraeducators, Instructional Paraeducators, and Service Paraeducators employed, either full time or part time in support positions in public schools. This Permit is required of all Paraeducators, regardless of employment date.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Associate's or Higher Degree” means that the degree is conferred by a regionally accredited institution of higher education or by a distance education institution that is regionally accredited, or any other accrediting agency the Delaware Secretary of Education deems within his or her discretion, to be reliable or equivalent to a regional accrediting agency.

“Completed at Least 2 Years of Study at an Institution of Higher Education” means the satisfactory completion of a minimum of sixty (60) semester hours of instruction at a regionally accredited institution of higher education or by a distance education institution that is regionally accredited, or any other accrediting agency the Delaware Secretary of Education deems within his or her discretion, to be reliable or equivalent to a regional accrediting agency, in general or educational studies, including reading, writing, and mathematics content and pedagogy, unless the institution of higher education defines two (2) years of full time study as the successful completion of a minimum of forty-eight (48) semester hours, and provides documentation of such definition.

“Department” means the Delaware Department of Education.

“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness or otherwise.

“Instructional Paraeducator” means a public school employee who provides one-on-one or small group instruction; assists with classroom management or individual student behavior; provides assistance in a computer laboratory; provides support in a library or media center; assists in training and support with functional skill activities, such as personal care or assistive technology; or provides instructional services to students under the direct supervision of a teacher. Instructional Paraeducators are those working with regular education students and students with disabilities in schools other than Title I schoolwide schools or with students not receiving Title I services in Title I targeted assistance schools.

“Paraeducator”, as used herein, means a paraprofessional, as it is used in 14 **Del.C.** §1205. Paraeducators are not "educators" within the meaning of 14 **Del.C.** §1202(4).

“Permit” means a document issued by the Department that verifies an individual's qualifications and training to serve as a Title I, Instructional or Service Paraeducator.

“Secretary” means the Secretary of the Delaware Department of Education.

“Service Paraeducator” means a public school employee who provides support services other than instructional assistance to students, but does not include bus aides (See 14 **DE Admin. Code** 1105).

“Standards Board” means the Professional Standards Board of the State of Delaware as established in response to 14 **Del.C.** §1205.

“State Board” means the State Board of Education of the State of Delaware established in response to 14 **Del.C.** §104.

“Title I Paraeducator” means a public school employee who provides one on one or small group instruction; assists with classroom management; provides assistance in a computer laboratory; provides support in a library or media center; or provides instructional services to students under the direct supervision of a teacher. Additionally, Title I Paraeducators are all Instructional Paraeducators who work with regular students and children with disabilities in Title I schoolwide schools and all Title I

Paraeducators who work with children receiving Title I services in Title I targeted assistance schools, except those whose duties are limited to acting as a translator or as a home school liaison.

3.0 Title I Paraeducators and Instructional Paraeducators

- 3.1 A Title I Paraeducator must hold a Title I Paraeducator Permit. An Instructional Paraeducator must hold an Instructional Paraeducator Permit.
- 3.1.1 In accordance with 14 **Del.C.** §1205(a), the Department shall issue a Title I Paraeducator Permit to an **[otherwise qualified]** applicant who has met the following:
- 3.1.1.1 Completion of at least two (2) years of study in general or educational studies at an institution of higher education; or
- 3.1.1.2 Receipt of an associate's or higher degree; or
- 3.1.1.3 Completion of a high school diploma or its recognized equivalent, and a passing score on a rigorous assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics.
- 3.1.1.3.1 Assessments which are accepted as providing evidence of knowledge and ability to assist in the instruction in reading, writing, and mathematics include:
- 3.1.1.3.1.1 Para Pro assessment with a qualifying score of 459 or higher.
- 3.1.1.3.1.2 Such alternative as may be established by the Standards Board, with the approval of the State Board; and
- 3.1.1.4 **[Submits Submission of]** sufficient verifiable evidence of qualifications to the Department **[and which]** meets all the requirements.
- 3.1.2 In accordance with 14 **Del.C.** §1205(a), the Department shall issue an Instructional Paraeducator Permit to an **[otherwise qualified]** applicant who has met the following:
- 3.1.2.1 Completion of at least two (2) years of study in general or educational studies at an institution of higher education; or
- 3.1.2.2 Receipt of an associate's or higher degree; or
- 3.1.2.3 Completion of a high school diploma or its recognized equivalent, and a passing score on a rigorous assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics.
- 3.1.2.3.1 Assessments which are accepted as providing evidence of knowledge and ability to assist in the instruction in reading, writing, and mathematics include:
- 3.1.2.3.1.1 Para Pro assessment with a qualifying score of 459 or higher.
- 3.1.2.3.1.2 Such alternative as may be established by the Standards Board, with the approval of the State Board; and
- 3.1.2.4 **[Submits Submission of]** sufficient verifiable evidence of qualifications to the Department **[and which]** meets all the requirements.
- 3.2 Application Procedures.
- 3.2.1 ~~The district, charter school, or other employing authority shall~~ applicant must submit the a Department approved application form, The applicant must include official transcripts ~~[or and when required]~~ **[approved]** official scores on an **[approved]** assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics, ~~to the Department on behalf of the applicant. The district, charter school or other employing authority applicant shall certify as part of the application form that the applicant, in their opinion, meets the requirements of Section 3.0 that answers on the application are true and accurate.~~
- 3.2.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope ~~to the district, charter school or other employing authority.~~
- 3.2.1.2 Test scores shall be official and sent directly from Educational Testing Service or other test vendor ~~to the district, charter school or other employing authority.~~ Unopened, unaltered

envelopes containing test scores sent to an individual may be accepted as official. The Department shall determine whether the scores, as presented, are acceptable.

- ~~3.2.2 Unemployed applicants shall submit sufficient verifiable evidence of qualifications to the Department.~~

4.0 ~~Instructional Paraeducators and Service Paraeducators~~

- 4.1 All ~~Instructional Paraeducators and Service Paraeducators~~ Must Hold the Appropriate Permit in accordance with 14 **Del.C.** §1205(a).
- 4.2 The Department shall issue a **[Service Paraeducator]** Permit to ~~an Instructional Paraeducator applicant or [a Service Paraeducator an otherwise qualified]~~ applicant for whom the district, charter school, or other employing authority **[who]** has submitted a Department approved application form and who provides evidence of a high school diploma or its recognized equivalent.

5.0 Validity

- 5.1 Unless stated otherwise herein, a Title I, Instructional, or Service Paraeducator Permit shall be valid for five (5) years from the Date of Issuance.
- 5.2 The Department shall renew a Paraeducator Permit, valid for an additional five (5) years, to a Paraeducator ~~whose school district, charter school, or other employing authority [who]~~ provides evidence ~~to the Department~~ of successful completion of a minimum of fifteen (15) clock hours of approved professional development.
- 5.3 ~~The paraeducator is required to complete~~ Fifteen (15) clock hours of approved professional development ~~is required to be completed~~ during the term of validity of the Paraeducator Permit.

6.0 Options for Renewal

- 6.1 Options for Renewal: are listed in Sections 6.2 and 6.3. These professional development activities are approved options for the renewal of a Paraeducator Permit. Unless otherwise stated, there is no limit to the number of hours that may be taken in any of the options listed below:
- 6.2 Options listed in Section 6.2 shall be valid for paraeducators holding a Permit whose expiration date does not exceed December ~~19~~ 10, 2015.
- 6.2.1 College credit completed at a regionally accredited college or university with a grade of "C" or better or a "P" in a pass or fail course (One [1] semester hour equals fifteen (15) clock hours).
- 6.2.2 Planned school professional development day (maximum six (6) clock hours per day).
- 6.2.3 Professional conference, workshop, institute, or academy that contributes to the participant's knowledge, competence, performance, or effectiveness as a paraeducator (verified clock hours actively involved in workshop or conference sessions).
- 6.2.4 Participation on a school, district, or state sponsored committee which has as its focus curriculum, instruction, or school or district improvement (verified clock hours of service or experience).
- 6.3 Educators holding a Paraeducator Permit whose expiration date does not exceed December 10, 2015 may also use the Paraeducator Permit renewal options listed in Section 6.3.
- 6.3.1 College courses taken at a regionally accredited College or University. College or University Credit shall be taken for credit and the educator shall attain a grade of "C" or better in the course, or a "P" in Pass / Fail course. [One (1) semester hour equals fifteen (15) clock hours.]
- 6.3.2 Professional development programs targeting curriculum, instruction, assessment, school climate, or other identified need.
- 6.3.3 A Committee, Professional Learning Community (PLC), Conference, Workshop, Institute or Academy that contribute to the participant's knowledge and skills, competence, performance or effectiveness in education that are directly connected to the school, district or charter school's Success Plan or State initiative. This option includes workshops offered by districts or other employing authorities either as part of a professional development day or during after school hours.

- 6.4 Options listed in Section 6.2 for the renewal of a Paraeducator Permit shall expire on December 10, 2015.
- 6.5 Educators either receiving their original Paraeducator Permit after December 11, 2010 or upon renewing their Paraeducator Permit on or after December 11, 2010 shall use the options listed in Section 6.3.

7.0 Criminal Conviction History

- 7.1 An applicant shall disclose his or her criminal conviction history upon application for any Paraeducator Permit.
- 7.2 Failure to disclose a criminal conviction history is grounds for denial or revocation of a Paraeducator Permit as specified in 14 **Del.C.** §1219.

8.0 Denial and Revocation

- 8.1 ~~A Paraeducator Permit~~ An applicant may be denied ~~an applicant a paraeducator permit~~ upon a finding that ~~an the~~ applicant has failed to meet the requirements set forth herein or is unfit to be issued a permit in the State.
- 8.2 A Paraeducator Permit may be revoked upon the dismissal of the permit holder for immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty, and must be revoked upon a finding that the permit holder made a materially false or misleading statement in his or her permit application.
- 8.3 A Paraeducator whose Permit has been denied or revoked may file a request for a hearing with the Secretary within ten (10) days of receipt of the notice of denial or revocation.
- 8.3.1 The Secretary's decision shall be final.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)(c), (16 **Del.C.** §122(3)(c))
16 **DE Admin. Code** 4463

ORDER

4463 Licensing and Registration of Operators of Public Water Supply Systems

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing the Licensing and Registration of Operators of Public Water Supply Systems. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Del.C.** §§122(3)u.

On January 1, 2014 (Volume 17, Issue 7), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by February 3, 2014, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notice regarding proposed Department of Health and Social Services

(DHSS) State of Delaware Regulations Governing the Licensing and Registration of Operators of Public Water Supply Systems was published in the Delaware *Register of Regulations* on January 1, 2014 (Volume 17, Issue 7).

The public comment period was open from January 1, 2014 through February 3, 2014. No comments were received on the proposed regulations during the public comment period and no changes have been made to the proposed regulations.

The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

There were no public comments received. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing the Licensing and Registration of Operators of Public Water Supply Systems is adopted and shall become effective March 11, 2014, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the January 2014 issue of the *Register* at page 691 (17 DE Reg. 691). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[4463 Licensing and Registration of Operators of Public Water Supply Systems](#)

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

Statutory Authority: 31 Delaware Code, Section 343(c) (31 **Del.C.** §343(c))
9 DE Admin. Code 201

ORDER

201 Child Placing Agencies

Summary and Comments

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE Requirements for Child Placing Agencies to provide clarity, reflect changes in laws and treaties, align with current best practices, and improve standards of care. A proposed draft was originally published in the July, 2013 *Register of Regulations*. During the period of public comment, comments were received from the *Governor's Advisory Council for Exceptional Citizens*, *State Council for Persons with Disabilities*, and *A Better Chance for Our Children*. A public hearing was held on July 24, 2013. All comments were considered in preparing the revised draft published in the December 1, 2013 *Delaware Register of Regulations*.

Comments based on the December publication were accepted until January 17, 2014. Comments were received from the *Division of Services for Aging and Adults with Physical Disabilities (DSAAPD)*, *State Council for Persons with Disabilities*, *Governor's Advisory Council for Exceptional Citizens*, and other individuals. Comments were reviewed, considered, and incorporated as summarized below.

Public Comments

5.0 Comment recommended a revision of the definition of "Complaint Investigation" so that such investigation is not limited exclusively to OCCL. Wording has been amended. Comment recommended revision of the definition of "Guardian" as the current definition "overlooks the concurrent authority of the Court of Chancery to also appoint

guardians of children." The definition has been amended as per advice from the Deputy Attorney General.

16.0 Comments requested that "some provision for notice to affected individuals (e.g. foster and adoptive parents; foster children)" should be required when a Licensee requests a variance "to facilitate input." Because a variance may be granted when a Licensee can achieve the intent of a Regulation in a satisfactory manner other than originally prescribed and can provide an explanation how the health, safety, and well-being of any child or client of an Agency will be maintained, advance input from "affected individuals" is not required. However, additional text has been added to require disclosure of a granted variance when requested.

18.0 and 18.3 Comments stated "it would be preferable to include a provision disallowing retaliation against individuals both initiating or cooperating with a complaint investigation" and question the "no exceptions policy" of notifying a Licensee or Agency that a complaint is being investigated. Upon advice from the Deputy Attorney General, Regulation 18.0 has been reorganized and text edited.

19.1 Comments recommended expanding notifications to OCCL. Additional text has been added and the section renumbered. As stated in regulation 123.3.3, the elopement of a child is a reportable condition by the foster parent to the Agency.

19.7 and 100.10 Comments questioned the standards listed for room temperature. Additional text has been added and the maximum and minimum room temperatures have been changed to reflect standards recommended by the American Academy of Pediatrics as found in *Caring for Our Children, National Health and Safety Performance Standards, Guidelines for Early Care and Education*, Third Edition, p. 212.

42.5 through 42.9 Comments questioned barring employment "in any capacity [of] any person convicted of offenses against a child." Following guidance from the Deputy Attorney General, this section has been revised. Added text is based on the *DELACARE Criminal History Record Checks Regulations*, which are used when making employment decisions for CPA employees.

44.0 Comments stated that the concept of prohibiting the exploitation of a child is not expressly addressed. This has been added in 75.3.

44.5.1 Comments recommended that "Incident" be substituted for "Incidence." Text changed.

77.1.6 Comments recommended embellishing with listing conduct that is prohibited. Text added.

77.1.7 Comments recommended adding examples of limitations on behavior management, especially adding the prohibition of mechanical restraints. Text added.

85.4.7 Comments recommended "adding other preparation/orientation activities, including completion of selective service registration." Text added.

89.0 Comments stated content was overbroad. Text amended.

95.1 Comments questioned the need to "categorically bar anyone over 65 years of age [from] becoming a foster parent". Restriction removed.

111.1 and 111.2 Comments recommended adding "a standard addressing potentially dangerous pets." Text added.

NOTICE OF RESCISSION AND PROMULGATION

The Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families adopts and promulgates the following licensing regulations for child placing agencies as authorized in 31 **Del.C.** §§341-344. All previous regulations and standards pertaining to such agencies are null and void. These regulations shall take effect on June 1, 2014.

Jennifer Ranji, Secretary, Department of Services for Children, Youth and Their Families, 2/14/14

Victoria Kelly, Director, Division of Family Services, 2/14/14

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

201 Child Placing Agencies

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 10113(b)(4) (24 **Del.C.** §10113(b)(4))
24 **DE Admin. Code** 2930

ORDER

2930 Council on Real Estate Appraisers

On November 1, 2013, the Delaware Council of Real Estate Appraisers published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 17, Issue 5. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 21, 2014 at a regularly scheduled meeting of the Delaware Council of Real Estate Appraisers to receive verbal comments regarding the Council's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Council considered the following documents:

Board Exhibit 1 - Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on January 21, 2014. No written comments were received by the Council during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Council with comments in writing and by testimony at the public hearing on the proposed amendments to the Council's regulations.
2. There were no public comments provided to the Council during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §4006(a)(1) the Council has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The majority of the proposed changes are changes of an administrative nature.
5. The public was given notice and an opportunity to provide the Council with comments in writing and by testimony at the public hearing on the proposed changes to the Council's rules and regulations.
6. Having received no public comments, the Council finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, pursuant to 24 **Del.C.** §4006(a)(1) and for the reasons set forth above, the Council of Real Estate Appraisers does hereby ORDER that the regulations be, and that they hereby are, adopted and promulgated as set forth in the Delaware *Register of Regulations* on November 1, 2013. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(g).

The new regulations are attached hereto as Exhibit A.

SO ORDERED this 18th day of February, 2014.

DELAWARE COUNCIL OF REAL ESTATE APPRAISERS

Georgianna Trietley, Chairperson
Ronald Mandato

Lynn Baker, Vice-Chairperson
Douglas Nickel

Bradford Levering
Frank Long

Jan Jenkins

***Please note that no changes were made to the regulation as originally proposed and published in the November 2013 issue of the *Register* at page 490 (17 DE Reg. 490). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2930 Council on Real Estate Appraisers

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on Tuesday, March 11, 2014 beginning at 1:30 p.m. A conference session and business meeting will be held on the following day, Wednesday, March 12, 2014 beginning at 12:15 p.m. The hearing, conference session and meeting are open to the public and will be held at the Washington Crossing Historic Park Visitor Center, 1112 River Road, Washington Crossing, Pennsylvania. For more information, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION
PUBLIC NOTICE**1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to (i) amend Commission Regulation 9.2.2.3 relating to Jockey Agents; (ii) adopt by reference the ARCI Model Rules for Uniform Medication and Drug Testing as set forth in the January 15, 2014 draft submitted to the Commission; (iii) adopt by reference the RMTC Thresholds for Environmental Contaminants and Androgenic-Anabolic Steroids Rule; and (iv) adopt by reference the Association of Racing Commissioners International (ARCI-011-020) Multiple Medications Violations Penalties. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of 29 **Del.C.** Ch. 101.

A copy of the proposed regulations is being published in the March 1, 2014 edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before April 1, 2014. Written materials submitted will be available for inspection at the above address.

On or after April 1, 2014, following review of the public comment, the Thoroughbred Racing Commission will determine whether to adopt the proposed amended Regulations or make additional changes because of the public comments received.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, March 20, 2014 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MANAGEMENT SERVICES
PUBLIC NOTICE

Submission of Annual Grant Application Under Part C of the Individuals with Disabilities Education Improvement Act of 2004

The Delaware Department of Health and Social Services will submit its annual grant application under Part C of the Individuals with Disabilities Education Improvement Act of 2004. The application will be available until April 21, 2014.

Please contact the Part C Birth to Three office at 302-255-9134 (call collect from Kent and Sussex) to secure a copy of the application or e-mail Inita.joyner@state.de.us. Send your written comments to Part C/Birth to Three, DMS/DHSS, 2nd floor, Main Building, Suite 249, 1901 N. DuPont Hwy, New Castle, DE 19720 or fax to 302-255-4407.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Affordable Care Act Section 4106 Preventive Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) regarding *the provision of preventive services described in section 4106 of the Affordable Care Act*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Federal Medical Assistance Percentage Claiming Methodology for the Adult Group

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) has submitted an amendment to the Medicaid State Plan regarding the Federal Medical Assistance Percentage (FMAP) specifically, *the FMAP claiming methodology for the adult group*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

1915(i) Home and Community-Based Services State Plan Amendment Option

**Please Note: The January 1, 2014 issue of the Delaware Register of Regulations stated that a copy of Delaware's proposed 1915(i) HCBS state plan option Concept Paper and a copy of the proposed 1915(i) HCBS State Plan Amendment would be accessible on the Division of Medicaid and Medical Assistance website at <http://www.dhss.delaware.gov/dhss/dmma>. However, the concept paper and proposed draft were not available for public viewing until January 17, 2014. Therefore, in accordance with 29 Del.C. §10118, this regulation is being republished to extend the opportunity for public comment to March 31, 2014.*

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) / gives notice to the public that the agency intends to submit a 1915(i) Home and Community-Based Services State Plan amendment to the Centers for Medicare and Medicaid Services (CMS).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Medicaid Reimbursement for Prescription Drugs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512 and with 42 CFR §447.205, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the drug pricing reimbursement methodology for pharmaceutical products, specifically, implementation of the pricing benchmark, *National Average Drug Acquisition Cost (NADAC)*, as published by the Centers for Medicare and Medicaid Services (CMS).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 31, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF PUBLIC HEALTH

PUBLIC NOTICE

4458 State of Delaware Food Code Regulations

The Department of Health and Social Services, Division of Public Health, is proposing regulations which amend Title 16 of the Delaware Code relating to the State of Delaware Food Code. Due to the extensive number of amendments the Division has concluded that the current 4458 State of Delaware Food Code regulations should be repealed and replaced in their entirety with the proposed regulations being published.

The proposed Code, based on the U.S. Food and Drug Administration's (FDA) 2013 Food Code, will introduce several important changes to better serve and protect Delawareans. Changes include:

- A requirement that the Person in charge (PIC) must be certified through an accredited food protection manager certification program.
- "Potentially hazardous food (PHF)" which will be replaced with the new terminology, "time and temperature controlled for safety (TCS)."
- Food establishments will be required to post notification to the public that "a copy of the most recent inspection report is available upon request."

On March 1, 2014, the Division plans to publish the amended 4458 State of Delaware Food Code regulations and hold them out for public comment per Delaware law. Copies of the proposed regulations are available for review in the March 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4546.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning

the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Monday, March 31, 2014 at:
Deborah Harvey, Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Deborah.Harvey@state.de.us; phone: (302) 744-4700

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE

Delaware Temporary Assistance for Needy Families - Employment and Training Program Requirements

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding Delaware Temporary Assistance for Needy Families (TANF) Employment and Training Program requirements, specifically, *Sanctions and Curing Sanctions*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 31, 2014.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE
REGISTER NOTICE SAN#: 2014-01

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

This action is to adopt provisions consistent with the proposed federal rule for the recreational black sea bass fishery and remain compliant with Addendum XXV to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass.

Black sea bass are managed cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council (MAFMC) and the National Marine Fisheries Service through the joint Summer Flounder, Scup and Black Sea Bass Fishery Management Plan. The ASMFC and MAFMC jointly approved a coastwide recreational black sea bass harvest limit for 2014 of 2.26 million pounds (1,189,474 fish) at their December 11, 2013 meeting. The ASMFC approved the continuation of ad hoc regional management measures under Addendum XXV at their February 4, 2014 meeting.

Addendum XXV requires the southern region states (Delaware to North Carolina) to implement recreational fishery management measures for black sea bass consistent with those measures required for federal waters. The National Oceanic and Atmospheric Administration's (NOAA) recommended federal recreational black sea bass measures for 2014 include a 12.5 inch minimum size limit, a 15 fish possession limit and open seasons from May 19 - September 18 and October 18 - December 31. These measures when combined with measures being implemented in the northern region (Massachusetts through New Jersey) will achieve the 2014 coastwide recreational harvest limit.

The hearing record on the proposed changes to the black sea bass regulation will be open March 1, 2014. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302)739-9042. A public hearing on the proposed amendment will be held, in conjunction with the public hearing on a proposed summer flounder amendment, on March 26, 2014 beginning at 6:00 PM in the Dover Public Library, located at 35 Loockerman Plaza, Dover, DE 19901.

DIVISION OF FISH AND WILDLIFE**REGISTER NOTICE SAN#: 2014-02****3511 Summer Flounder Size Limits; Possession Limits; Season**

This action is to consider amending Delaware's summer flounder (*Paralichthys dentatus*) regulation for consistency with Addendum XXV to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass. It is anticipated that the amendment will include a liberalization of the recreational minimum size limit.

Summer flounder are managed cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council (MAFMC) and the National Marine Fisheries Service through Amendment 13 to the joint Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda. The ASMFC and MAFMC jointly approved a coastwide recreational summer flounder harvest limit for 2014 of 7.01 million pounds (2,421,720 fish) at their December 11, 2013 meeting. The ASMFC approved a regional management approach for states under Addendum XXV at its February 4, 2014 meeting.

Under the regional management approach, states within a region are required to establish the same size and possession limits. Delaware is in a region with Maryland and Virginia. It is anticipated that Delaware will be required to change its existing recreational 17-inch minimum size limit to a 16-inch recreational minimum size limit. Further, it is anticipated that there will be no change in Delaware's present four fish recreational possession limit or year-round recreational summer flounder season. Although unlikely, it should be noted that these proposed measures are subject to change pending the release of additional recreational landings data.

The hearing record on the proposed changes to §3511 Summer Flounder Size Limits; Possession Limits will be open March 1, 2014. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held, in conjunction with the public hearing on a proposed black sea bass amendment, on March 26, 2014 beginning at 6:00 PM in the Dover Public Library, located at 35 Loockerman Plaza, Dover, DE 19901.

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****PUBLIC NOTICE****1100 Board of Dentistry and Dental Hygiene**

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** §1106(a)(1), proposes to amend its regulations. The proposed changes identify when a successful practical clinical examination score expires thus requiring a new applicant to re-take the exam. The changes also eliminate language from regulation 10 which is redundant with the statute.

The Board will hold a public hearing on the proposed rule change March 27, 2014 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Amanda McAtee, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, Suite 203, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 14, 2014.

DIVISION OF PROFESSIONAL REGULATION**PUBLIC NOTICE****1725 Polysomnography Advisory Council**

The Polysomnography Advisory Council, pursuant to 24 **Del.C.** §1799W(c), proposes to adopt the following regulations governing the practice of polysomnography in the State of Delaware. As a newly created Council, regulating a profession that first required licensure by virtue of legislation enacted September 12, 2012, these regulations are comprehensive, and all newly created.

The Council will hold a public hearing on the proposed regulation change on March 28, 2014 at 1:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Shauna Slaughter, Executive Director of the Delaware Polysomnography Advisory Council,

Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 18, 2014 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
2900 Real Estate Commission

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to its rules and regulations.

A public hearing will be held on April 10, 2014 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be April 25, 2014, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting on May 8, 2014 at 9:30 a.m., at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed an amendment to Rule 13.0 to add a new Rule 13.2.1.4 to clarify the CE hours required where an individual has been licensed for at least eighteen months but less than twenty-four months.

DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
2925 Real Estate Commission Education Committee

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to the Real Estate Commission Education Guidelines (the "Guidelines").

A public hearing will be held on April 10, 2014 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be April 25, 2014, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting on May 8, 2014 at 9:15 a.m., at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed revisions to Rule 7.0 to specify that, where a student requests approval for a continuing education course, an instructor resume is not required for a Commission or ARELLO approved instructor. Rule 7.0 is further amended to state that Modules 1 – 6 automatically qualify for Module 7 credit. Rule 8.4 is revised to state that the course provider shall determine whether electronic devices may be used during the course.